

OUTER CONTINENTAL SHELF LANDS ACT
AMENDMENTS OF 1976

REPORT

BY THE

AD HOC ^{OF} SELECT COMMITTEE ON THE
OUTER CONTINENTAL SHELF

together with

ADDITIONAL, SUPPLEMENTAL, MINORITY, AND
ADDITIONAL MINORITY VIEWS

[To accompany H.R. 6218]



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(II)

CONTENTS

	Page
Text of amendment as reported by committee.....	1
I. Summary of key provisions of H.R. 6218.....	42
A. H.R. 6218 and the Secretary of the Interior.....	42
B. H.R. 6218 and the energy industry.....	44
C. H.R. 6218 and the States.....	45
D. H.R. 6218 and the Environment.....	46
E. H.R. 6218 and the Worker.....	47
F. H.R. 6218 and the Citizen.....	47
II. Purposes of the legislation.....	47
III. Background.....	49
IV. Recent OCS developments in the United States.....	56
The U.S. Outer Continental Shelf.....	56
Oil and gas potential on the OCS.....	56
U.S. oil and gas production from the OCS.....	57
Emerging issues in U.S. offshore oil and gas development	
OCS activity; After Santa Barbara.....	58
Chronology of selected recent OCS events, 1969-76.....	59
OCS energy resource development in a setting of conflict.....	67
The recent Congressional response.....	70
The House of Representatives: establishment of a special	
committee.....	71
V. Need for H.R. 6218.....	73
VI. Section-by-section analysis.....	80
Title I—Findings and purposes.....	80
Section 101.—Findings.....	80
Section 102.—Purposes.....	81
Title II.—Amendments to the Outer Continental Shelf Lands	
Act.....	81
Section 201.—Definitions.....	81
Section 202.—National policy.....	83
Section 203.—Laws applicable to the Outer Continental	
Shelf.....	83
Establishment of boundaries.....	84
Safety regulations and enforcement.....	85
Section 204.—Outer Continental Shelf Exploration and	
Development Administration.....	86
Cancellation provisions.....	87
Rates of production.....	89
Section 205.—Revision of bidding and lease administra-	
tion.....	89
Phillips plan provision.....	90
Purposes of alternate lease systems.....	91
Joint bidding restrictions.....	92
Lease size limitation lifted.....	93
Anti-trust review.....	94
Due diligence requirements.....	95
Federal-State joint leasing.....	95
Section 206.—Outer Continental Shelf Oil and Gas	
Exploration.....	97
Pre-lease exploratory drilling.....	98
Section 207.—Annual report.....	99
Section 208.—New sections of the Outer Continental	
Shelf Lands Act.....	99
Section 18.—Leasing programs.....	99
Section 19.—Regional OCS Advisory Boards.....	102
Effect of recommendations.....	103

IV

VI. Section-by-section analysis--Continued	
Title II.—Continued	Page
Section 20.—Baseline and monitoring studies.....	103
Section 21.—Safety regulations.....	105
Responsibility for regulations.....	105
Best technology required.....	107
Safety report and compilation.....	107
Regulations for hazardous working conditions..	108
Section 22.—Enforcement.....	108
Investigations.....	109
Section 23.—Citizens' suits, court jurisdiction, and judicial review.....	110
Citizens' suits.....	110
Jurisdiction.....	111
Judicial review.....	112
Section 24.—Remedies and penalties.....	113
Section 25.—Oil and gas development and produc- tion.....	113
Offshore plan and on-shore statement.....	114
NEPA review.....	115
Comments and recommendations.....	116
Modifications, revisions, and disapproval.....	116
Section 26.—OCS oil and gas information program..	118
Planning information to States.....	119
Confidentiality.....	119
Section 27.—Federal purchase and disposition of oil and gas.....	119
Section 28.—Limitations on export.....	121
Title III.—Offshore oil pollution fund.....	121
Section 301.—Definitions.....	122
Section 302.—Establishment of the Fund and the re- volving account.....	123
Section 303.—Prohibition.....	124
Section 304.—Notification.....	124
Section 305.—Removal of discharged oil.....	124
Section 306.—Duties and powers.....	125
Section 307.—Recoverable damages.....	125
Section 308.—Clean-up costs and damages.....	126
Section 309.—Disbursements from the revolving account..	128
Section 310.—Fee collection; deposits in revolving account.....	129
Section 311.—Financial responsibility.....	130
Section 312.—Trustee of natural resources.....	132
Section 313.—Claims procedure.....	132
Section 314.—Judicial review.....	134
Section 315.—Class actions.....	135
Section 316.—Representation.....	135
Section 317.—Jurisdiction and venue.....	135
Section 318.—Access to records.....	135
Section 319.—Public access to information.....	135
Section 320.—Annual report.....	136
Section 321.—Authorization of appropriations.....	136
Section 322.—Relationship to other law.....	136
Title IV.—Amendments to the Coastal Zone Management Act of 1972.....	137
Title V.—Miscellaneous provisions.....	147
Section 501.—Review of shut in or flaring wells.....	147
Section 502.—Review and revision of royalty payments..	147
Section 503.—Natural gas distribution.....	148
Section 504.—Relationship to existing law.....	148
VII. Cost of the legislation.....	149
VIII. Compliance with Clause 2(1)(3) of Rule XI.....	151
IX. Inflationary impact statement.....	151
X. Congressional Budget Office report.....	151

	Page
XI. Departmental reports.....	155
XII. Changes in existing law made by the bill, as reported.....	186
XIII. Additional views on H.R. 6218 by Hon. John Breau.....	241
XIV. Additional views on H.R. 6218 by:	
Hon. Christopher J. Dodd.....	247
Hon. Gerry E. Studds.....	247
Hon. George Miller.....	247
Hon. Joshua Eilberg.....	247
Hon. Morris K. Udall.....	247
Hon. Patsy T. Mink.....	247
Hon. William J. Hughes.....	247
XV. Supplemental views on leasing options by:	
Hon. Gerry Studds.....	249
Hon. George Miller.....	249
Hon. Patsy Mink.....	249
Hon. Morris Udall.....	249
Hon. Joshua Eilberg.....	249
Hon. Christopher J. Dodd.....	249
Hon. Les AuCoin.....	249
Hon. William J. Hughes.....	249
XVI. Additional view by Hon. Martin A. Russo.....	251
XVII. Minority views by:	
Hon. Hamilton Fish, Jr.....	253
Hon. Edwin B. Forsythe.....	253
Hon. Pierre S. du Pont.....	253
Hon. Don Young.....	253
Hon. Robert E. Bauman.....	253
Hon. Charles E. Wiggins.....	253
XVIII. Additional Minority views of Congressman Don Young.....	273
XIX. Additional Minority Views of Congressman Pierre S. duPont and Congressman Robert E. Bauman.....	277

OUTER CONTINENTAL SHELF LANDS ACT
AMENDMENTS OF 1976

MAY 4, 1976.—Committed to the Committee of the Whole House on the
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Mr. MURPHY of New York, from the Ad Hoc Select Committee on the
Outer Continental Shelf, submitted the following

REPORT

together with

ADDITIONAL SUPPLEMENTAL AND
MINORITY VIEWS

[To accompany H.R. 6218]

The Ad Hoc Select Committee on the Outer Continental Shelf, to whom was referred the bill (H.R. 6218) to establish a policy for the management of oil and natural gas in the Outer Continental Shelf, to protect the marine and coastal environment, to amend the Outer Continental Shelf Lands Act, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Outer Continental Shelf Lands Act Amendments of 1976".

TABLE OF CONTENTS

TITLE I—FINDINGS AND PURPOSES WITH RESPECT TO MANAGING
THE RESOURCES OF THE OUTER CONTINENTAL SHELF

Sec. 101. Findings.

Sec. 102. Purposes.

TITLE II—AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

- Sec. 201. Definitions.
- Sec. 202. National policy for the Outer Continental Shelf.
- Sec. 203. Laws applicable to the Outer Continental Shelf.
- Sec. 204. Outer Continental Shelf exploration and development administration.
- Sec. 205. Revision of bidding and lease administration.
- Sec. 206. Outer Continental Shelf oil and gas exploration.
- Sec. 207. Annual report.
- Sec. 208. New sections of the Outer Continental Shelf Lands Act.
 - "Sec. 18. Outer Continental Shelf leasing program.
 - "Sec. 19. Regional Outer Continental Shelf Advisory Boards.
 - "Sec. 20. Baseline and monitoring studies.
 - "Sec. 21. Safety regulations.
 - "Sec. 22. Enforcement.
 - "Sec. 23. Citizen suits, court jurisdiction, and judicial review.
 - "Sec. 24. Remedies and penalties.
 - "Sec. 25. Oil and gas development and production.
 - "Sec. 26. Outer Continental Shelf oil and gas information program.
 - "Sec. 27. Federal purchase and disposition of oil and gas.
 - "Sec. 28. Limitations on export."

TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

- Sec. 301. Definitions.
- Sec. 302. Establishment of the Fund and the revolving account.
- Sec. 303. Prohibition.
- Sec. 304. Notification.
- Sec. 305. Removal of discharged oil.
- Sec. 306. Duties and powers.
- Sec. 307. Recoverable damages.
- Sec. 308. Cleanup costs and damages.
- Sec. 309. Disbursements from the revolving account.
- Sec. 310. Fee collection; deposits in revolving account.
- Sec. 311. Financial responsibility.
- Sec. 312. Trustee of natural resources.
- Sec. 313. Claims procedure.
- Sec. 314. Judicial review.
- Sec. 315. Class actions.
- Sec. 316. Representation.
- Sec. 317. Jurisdiction and venue.
- Sec. 318. Access to records.
- Sec. 319. Public access to information.
- Sec. 320. Annual report.
- Sec. 321. Authorization of appropriations.
- Sec. 322. Relationship to other law.

TITLE IV—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

- Sec. 401. Amendments to the Coastal Zone Management Act of 1972.

TITLE V—MISCELLANEOUS PROVISIONS

- Sec. 501. Review of shut-in or flaring wells.
- Sec. 502. Review and revision of royalty payments.
- Sec. 503. Natural gas distribution.
- Sec. 504. Relationship to existing law.

TITLE I—FINDINGS AND PURPOSES WITH RESPECT TO MANAGING THE RESOURCES OF THE OUTER CONTINENTAL SHELF

FINDINGS

- Sec. 101. The Congress finds and declares that—
 - (1) the demand for energy in the United States is increasing and will continue to increase for the foreseeable future;

- (2) domestic production of oil and gas has declined in recent years;
- (3) the United States has become increasingly dependent upon imports of oil from foreign nations to meet domestic energy demand;
- (4) increasing reliance on imported oil is not inevitable, but is rather subject to significant reduction by increasing the development of domestic sources of energy supply;
- (5) consumption of natural gas in the United States has greatly exceeded additions to domestic reserves in recent years;
- (6) technology is or can be made available which will allow significantly increased domestic production of oil and gas without undue harm or damage to the environment;
- (7) the Outer Continental Shelf contains significant quantities of petroleum and natural gas, and is a vital national resource reserve which must be carefully managed so as to realize fair value, to preserve and maintain competition, and to reflect the public interest;
- (8) there presently exists a variety of technological, economic, environmental, administrative, and legal problems which tend to retard the development of the oil and natural gas resources of the Outer Continental Shelf;
- (9) environmental and safety regulations relating to activities on the Outer Continental Shelf should be reviewed in light of current technology and information;
- (10) the development, processing, and distribution of the oil and gas resources of the Outer Continental Shelf, and the siting of related energy facilities, may cause adverse impacts on the various coastal States and other States;
- (11) policies, plans, and programs developed by coastal and other States in response to activities on the Outer Continental Shelf cannot anticipate and ameliorate such adverse impacts unless such States are provided with timely access to information regarding activities on the Outer Continental Shelf and an opportunity to review and comment on decisions relating to such activities;
- (12) because of the national interest served by the development and production of the resources of the Outer Continental Shelf, the Federal Government should provide financial assistance to coastal and other States to assist them in planning for and ameliorating the impacts associated with such development and production;
- (13) funds must be made available to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges; and
- (14) because of the possible conflicts between exploitation of the oil and gas resources in the Outer Continental Shelf and other uses of the marine environment, including fish and shellfish growth and recovery, and recreational activity, the Federal Government must assume responsibility for the minimization or elimination of any conflict associated with such exploitation.

PURPOSES

Sec. 102. The purposes of this Act are to—

- (1) establish policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign energy sources, and maintain a favorable balance of payments in world trade;
- (2) preserve, protect, and develop oil and natural gas resources in the Outer Continental Shelf in a manner which is consistent with the need
 - (A) to make such resources available to meet the Nation's energy needs as rapidly as possible,
 - (B) to balance orderly energy resource development with protection of the human, marine, and coastal environments,
 - (C) to insure the public a fair and equitable return on the resources of the Outer Continental Shelf, and
 - (D) to preserve and maintain free enterprise competition;
- (3) encourage development of new and improved technology for energy resource production which will eliminate or minimize risk of damage to the human, marine, and coastal environments;
- (4) provide States which are impacted by Outer Continental Shelf oil and gas exploration, development, and production with comprehensive

assistance in order to anticipate and plan for such impact, and thereby to assure adequate protection of the human environment;

(5) assure that States have timely access to information regarding activities on the Outer Continental Shelf, and opportunity to review and comment on decisions relating to such activities, in order to anticipate, ameliorate, and plan for the impacts of such activities;

(6) assure that States which are directly affected by exploration, development, and production of oil and natural gas are provided an opportunity to participate in policy and planning decisions relating to management of the resources of the Outer Continental Shelf;

(7) minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas, and the recovery of other resources such as fish and shellfish;

(8) provide financial assistance to States to assist them in planning for and ameliorating the impacts of activities on the Outer Continental Shelf;

(9) establish an oil spill liability fund to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf and for any damages to public or private interests caused by such spills or discharges; and

(10) insure that the extent of oil and natural gas resources of the Outer Continental Shelf is assessed at the earliest practicable time.

TITLE II—AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

DEFINITIONS

SEC. 201. (a) Paragraph (c) of section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331) is amended to read as follows:

"(c) The term 'lease' means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration for, and development and production of, deposits of oil, gas, or other minerals;"

(b) Such section is further amended—

(1) in subsection (d), by striking out the period and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following new paragraphs:

"(e) The term 'coastal zone' means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

"(f) The term 'coastal State' means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, or Long Island Sound, or one or more of the Great Lakes, and such term includes Puerto Rico, the Virgin Islands, Guam, and American Samoa;

"(g) The term 'affected State' means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any State—

"(1) the laws of which are declared, pursuant to section 4(a)(2) of this Act, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

"(2) which is or is proposed to be directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of this Act;

"(3) which is receiving, or in accordance with the proposed activity, will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported by means of vessels or by a combination of means including vessels;

"(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal,

marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or

"(5) in which the Secretary finds that there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

"(h) The term 'marine environment' means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf of the United States;

"(i) The term 'coastal environment' means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

"(j) The term 'human environment' means the physical, esthetic, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, recreation, air and water, employment, and health of those affected, directly or indirectly, by activities occurring in the outer Continental Shelf of the United States;

"(k) The term 'Governor' means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this Act;

"(l) The term 'exploration' means the process of searching for oil, natural gas, or other minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such resources, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in commercial quantities is made, and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

"(m) The term 'development' means those activities which take place following discovery of oil, natural gas, or other minerals in commercial quantities, including geophysical activity, drilling, platform construction, and operation of all on-shore support facilities, and which are for the purpose of ultimately producing the resources discovered;

"(n) The term 'production' means those activities which take place after the successful completion of any means for the removal of resources, including such removal, field operations, transfer of oil, natural gas, or other minerals to shore, operation monitoring, maintenance, and work-over drilling;

"(o) The term 'antitrust law' means—

"(1) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.);

"(2) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.);

"(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

"(4) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (15 U.S.C. 8 and 9); or

"(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21);

"(p) The term 'fair market value' means the value of any oil, gas, or other mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period,

or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary; and

"(q) The term 'major Federal action' means any action or proposal by the Secretary which is subject to the provisions of section 102(2) (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2) (C)).".

NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF

SEC. 202. Section 3 of the Outer Continental Shelf Lands Act (43 U.S.C. 1332) is amended to read as follows:

"SEC. 3. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.—It is hereby declared to be the policy of the United States that—

"(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;

"(2) this Act shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

"(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

"(4) since exploration, development, and production of the mineral resources of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

"(A) such States may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts; and

"(B) such States are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, mineral resources of the outer Continental Shelf;

"(5) the rights and responsibilities of all States to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

"(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

LAWS APPLICABLE TO THE OUTER CONTINENTAL SHELF

SEC. 203. (a) Section 4(a) (1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a) (1)) is amended—

(1) by striking out "and fixed structures" and inserting in lieu thereof "and all structures permanently or temporarily attached to the seabed,"; and

(2) by striking out "removing, and transporting resources therefrom" and inserting in lieu thereof "or producing resources therefrom, or any such structure (other than a ship or vessel) for the purpose of transporting such resources".

(b) Section 4(a) (2) of such Act is amended to read as follows:

"(2) (A) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each coastal State adjacent to the outer Continental Shelf, as in effect on the date of enactment of this paragraph, are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and those artificial islands and structures referred to in paragraph (1) of this subsection, which

would be within the area of such State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf. After such date of enactment—

“(i) any change in any criminal law of such State shall be adopted as the law of the United States, for purposes of this paragraph, at the same time such change takes effect in such State; and

“(ii) any change in any civil law of such State during the five-year period beginning on such date of enactment shall be adopted as the law of the United States, for purposes of this paragraph, at the end of such five-year period, and any change during any subsequent five-year period shall be adopted in the same manner at the end of the five-year period in which such change occurs.

Within one year after the date of enactment of this paragraph, the President shall determine and publish in the Federal Register projected lines extending seaward and defining each such area. The President may, prior to such determination, establish procedures for settling any outstanding boundary disputes relating to the projection of such lines. All of such applicable and consistent State laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

“(B) Within one year after the date of enactment of this paragraph, the President shall establish procedures for settling any outstanding international boundary dispute respecting the outer Continental Shelf, including any dispute involving international boundaries between the jurisdictions of the United States and Canada and between the jurisdiction of the United States and Mexico.”

(c) Section 4(d) of such Act is amended to read as follows:

“(d) For the purposes of the National Labor Relations Act, any unfair labor practice, as defined in such Act, occurring upon any artificial island or structure referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the coastal State, the laws of which apply to such artificial island or structure pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the coastal State nearest the place of location of such artificial island or structure.”

(d) Section 4 of such Act is amended—

(1) in paragraph (1) of subsection (e), by striking out “the islands and structures referred to in subsection (a)”, and inserting in lieu thereof “the artificial islands and structures referred to in subsection (a)”;

(2) in subsection (f), by striking out “artificial islands and fixed structures located on the outer Continental Shelf” and inserting in lieu thereof “the artificial islands and structures referred to in subsection (a)”;

(3) in subsection (g), by striking out “the artificial islands and fixed structures referred to in subsection (a)” and inserting in lieu thereof “the artificial islands and structures referred to in subsection (a)”.

(e) Section 4(e)(1) of such Act is amended by striking out “head” and inserting in lieu thereof “Secretary”.

(f) Section 4(e)(2) of such Act is amended to read as follows:

“(2) The Secretary of the Department in which the Coast Guard is operating shall mark for the protection of navigation any artificial island or structure referred to in subsection (a) whenever the owner has failed suitably to mark such island or structure in accordance with regulations issued under this Act, and the owner shall pay the cost of such marking.”

(g) Section 4 of such Act is further amended by striking out subsection (b) and relettering subsections (c), (d), (e), (f), and (g) as subsections (b), (c), (d), (e), and (f), respectively.

OUTER CONTINENTAL SHELF EXPLORATION AND DEVELOPMENT ADMINISTRATION

Sec. 204. Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334 et seq.) is amended to read as follows:

“SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf and shall prescribe such regulations as necessary to carry out such provisions. Such regulations shall, as of the date of their promulgation, apply to all operations conducted under any lease issued or maintained under the provisions of this Act and shall be in furtherance of the findings, purposes, and policies of this Act. In the enforcement of safety, environmental,

and conservation laws and regulations, the Secretary shall cooperate with the relevant agencies of the Federal Government and of the affected States. At each stage in the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General with respect to matters which may affect competition. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

“(1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the interest of conservation, to facilitate proper development of a lease, or to allow for the unavailability of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including aquatic life), to property, to any mineral deposits (in areas leased or not yet leased), or to the marine, coastal, or human environment, and for the extension of any permit or lease affected by such suspension or prohibition by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued concerning such lease or permit;

“(2) for the cancellation of any lease or permit, at any time, when it is determined, after hearing, that continued activity pursuant to such lease or permit would cause serious harm or damage, which would not decrease over a reasonable period of time, to life (including aquatic life), to property, to any mineral deposits (in areas leased or not yet leased), to the national security or defense, or to the marine, coastal, or human environment, except that the cancellation of any lease pursuant to such regulations shall not foreclose any claim for compensation as may be required by the Constitution of the United States or any other law;

“(3) for the assignment or relinquishment of leases;

“(4) for the sale of royalty, net profit share, or purchased oil and gas accruing or reserved to the United States in accordance with section 27 of this Act;

“(5) for the utilization of different bidding systems in accordance with section 8(a) of this Act;

“(6) for the preparation and submission of annual reports to the Congress in accordance with section 15 of this Act;

“(7) for the development and enforcement of safety regulations in accordance with sections 21 and 22 of this Act;

“(8) for the preparation and implementation of leasing and development programs and plans in accordance with this section and section 18 of this Act;

“(9) for the procedures for citizen suits in accordance with section 23 of this Act;

“(10) for the establishment of and procedures for Regional Outer Continental Shelf Advisory Boards in accordance with section 19 of this Act;

“(11) for unitization, pooling, and drilling agreements;

“(12) for subsurface storage of oil and gas;

“(13) for drilling or easements necessary for exploration, development, and production; and

“(14) for the prompt and efficient exploration and development of a lease area.

“(b) The issuance and continuance in effect of any lease, or of any extension, renewal, or replacement of any lease, under the provisions of this Act shall be conditioned upon compliance with the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or with the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof.

“(c) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this Act, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

"(d) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of this Act.

"(e) Rights-of-way, through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other mineral under such regulations and upon such conditions as to the application therefor and the survey, location, and width thereof as may be prescribed by the Secretary, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from said lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in consultation with the Administrator of the Federal Energy Administration, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of this Act.

"(f) (1) The lessee shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates consistent with any rule or order issued by the President in accordance with any provision of law.

"(2) If no rule or order referred to in paragraph (1) has been issued, the lessee shall produce such oil or gas, or both, at rates consistent with any regulation promulgated by the Secretary which is to deal with emergency shortages of oil or gas or which is to assure the maximum rate of production which is efficient and safe for the duration of the activity covered by the approved plan. The Secretary may permit the lessee to vary such rates if he finds that such variance is necessary.

"(g) After the date of enactment of this section, no holder of any oil and gas lease issued or maintained pursuant to this Act shall be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations."

REVISION OF BIDDING AND LEASE ADMINISTRATION

Sec. 205. (a) Subsections (a) and (b) of section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) are amended to read as follows:

"(a) (1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

"(A) cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

"(B) variable royalty bid based on a per centum of the production saved, removed, or sold, with a cash bonus as determined by the Secretary;

"(C) cash bonus bid with diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

"(D) cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

"(E) fixed cash bonus with the net profit share reserved as the bid variable;

"(F) cash bonus bid with a royalty at no less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

"(G) cash bonus bids for 1 per centum shares of an undivided working interest in the lease area, such shares to be awarded at a price which is equal to the average price per share of the highest responsible qualified bids tendered for not more than 100 per centum of the lease area, with a fixed share of the net profits derived from the production of oil and gas pursuant to a lease to be determined by the Secretary; or

"(H) cash bonus bids for 1 per centum shares of an undivided working interest in the lease area, such shares to be awarded at a price which is equal to the average price per share of the highest responsible qualified bids tendered for not more than 100 per centum of the lease area, and with a fixed or diminishing royalty based upon the production derived from operation pursuant to the lease.

"(2) The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years from the date of the lease sale or no later than the date of the authorization of development and production, whichever date first occurs.

"(3) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

"(4) At least ninety days prior to notice of any lease sale under subparagraphs (D), (E), (F), and (G) of paragraph (1), the Secretary shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee. In determining the attribution of profits as between oil and gas, costs shall be allocated proportionately to the value of the respective amount of oil and gas produced.

"(5) (A) In the case of any lease area offered for sale pursuant to subparagraph (G) or (H) of paragraph (1), if the accepted bid per share of any person for a per centum working interest in such lease area is less than the average price per share of all accepted bids, and such person does not, within such time as the Secretary shall by regulation prescribe, agree to pay such price, then—

"(i) the Secretary shall return to such person any deposit made with respect to such bid; and

"(ii) any right acquired and any obligation incurred by such person with respect to such bid shall be deemed to be canceled.

"(B) (i) In the event the Secretary sells less than 100 per centum of the interest in the lease area offered under subparagraph (G) or (H) of paragraph (1), he shall offer the additional shares to the bidders who purchased shares pursuant to the initial bidding process. The Secretary shall sell such additional shares to the bidders who have elected to purchase under this clause, except that the maximum number of additional shares which any such bidder may purchase shall be in proportion to his bidden interest.

"(ii) To the extent that any per centum of the interest in the lease area offered under such subparagraph (G) or (H) remains unsold after the Secretary uses the procedure required by clause (i) of this subparagraph, he shall repeat such procedure for such period of time as he determines to be reasonable.

"(iii) To the extent that any per centum of the interest in the lease area offered under such subparagraph (G) or (H) remains unsold after the Secretary uses the procedure required under clauses (i) and (ii) of this subparagraph, the Secretary shall offer any remaining shares for sale to the highest interested bidder whose bid was not accepted in the initial bidding process, except that any such bidder may not purchase a number of shares which exceeds the number for which he originally bid. The Secretary shall repeat such procedure for such period of time as he determines to be reasonable.

"(iv) Any additional shares of interest in a lease area which are sold by the Secretary pursuant to this subparagraph shall be sold at a price equal to the price at which shares of the interest in such lease area were sold pursuant to the initial bidding process.

"(C) The Secretary shall, by regulation, provide for the cancellation of any lease sale held pursuant to subparagraph (G) or (H) of paragraph (1), if the total amount to be paid for all shares sold does not represent a fair return to the Federal Government.

"(D) The Secretary shall establish standards and procedures for the formation of a joint working group in an area leased pursuant to subparagraph (G) or (H) of paragraph (1), and shall approve one or more operators for, and the terms of management of, activities on such lease area. The United States, represented by the Secretary, shall be considered a nonvoting party to any joint working group formed pursuant to such standards and procedures.

"(E) (A) The Secretary shall utilize the bidding alternatives from among those authorized by this subsection, in accordance with subparagraphs (B) and (C) of this paragraph, so as to accomplish the purposes and policies of this Act, including (i) providing a fair return to the Federal Government, (ii) increasing competition, (iii) assuring competent and safe operations, (iv) avoiding undue speculation, (v) avoiding unnecessary delays in exploration, development, and production, (vi) discovering and recovering oil and gas, (vii) developing new oil and gas resources in an efficient and timely manner, and (viii) limiting administrative burdens on government and industry. In order to select a bid to accomplish these purposes and policies, the Secretary may, in his discretion, require each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding alternatives set forth in paragraph (1) of this subsection.

"(B) During the five-year period commencing on the date of enactment of this subsection, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and national policies of this Act, require each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random or determined by the Secretary to be desirable for the acquisition of valid statistical data and otherwise consistent with the provisions of this Act.

"(C) (i) Except as provided in clause (ii), the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection shall not be applied to more than 90 per centum of the total area offered for lease each year, during the five-year period beginning on the date of enactment of this subsection, in each region where there has been no development of oil and gas prior to October 1, 1975, including the outer Continental Shelf region off southern California outside the Santa Barbara Channel.

"(ii) If, in any year following the date of enactment of this subsection, the Secretary finds that compliance with the limitation set forth in clause (i) would unduly delay efficient development of the oil and gas resources of the outer Continental Shelf, result in less than a fair return to the Federal Government, or result in a reduction of competition, he shall submit to the Senate and House of Representatives a report stating his specific findings and detailed reasons therefor. The Secretary may thereafter, for that year, exceed such limitation if both the Senate and House of Representatives pass a resolution of approval of the Secretary's finding within thirty days after receipt of such report (not including days when Congress is not in session).

"(D) Within six months after the end of each fiscal year, the Secretary shall report to the Congress, as provided in section 15 of this Act, with respect to the use of the various bidding options provided for in this subsection. Such report shall include—

"(i) the schedule of all lease sales held during such year and the bidding system or systems utilized;

"(ii) the schedule of all lease sales to be held the following year and the bidding system or systems to be utilized;

"(iii) the benefits and costs associated with conducting lease sales using the various bidding systems;

"(iv) if applicable, the reasons why a particular bidding system has not been or will not be utilized;

"(v) if applicable, the reasons why more than 90 per centum of the area leased in the past year, or to be offered for lease in the upcoming year, was or is to be leased under the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection; and

"(vi) an analysis of the capability of each bidding system to accomplish the purposes and policies stated in subparagraph (A) of this paragraph.

"(7) The Secretary may, by regulation, permit submission of bids made jointly by or on behalf of two or more persons for an oil and gas lease under this Act unless—

"(A) more than one of the joint bidders, directly or indirectly, controls or is chargeable worldwide with an average daily production of one million six hundred thousand barrels a day or more, or the equivalent, in crude oil, natural gas, and liquefied petroleum products; or

"(B) the bidding system is one authorized by subparagraph (G) or (H) of paragraph (1) of this subsection and joint bidding is not specifically found by the Secretary to be necessary to promote competition.

"(h) An oil and gas lease issued pursuant to this section shall—

"(1) cover an area designated by the Secretary on the basis of entire geological structures or traps, or be comprised of a reasonable, economic production unit, as determined by the Secretary;

"(2) be for a period of five years, and may be extended for a period of five additional years if the Secretary finds such extension is necessary to encourage exploration and development in areas of unusually deep water or adverse weather conditions, and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations, as approved by the Secretary, are conducted thereon, except that no such extension shall be granted if the Secretary finds that the lessee has not exercised due diligence in the maximum, efficient, and safe development of all wells and resources pursuant to the lease;

"(3) require the payment of amount or value as determined by one of the bidding procedures set forth in subsection (a) of this section;

"(4) entitle the lessee to explore, develop, and produce the oil and gas resources contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan required by this Act;

"(5) contain a provision that the Secretary shall, in the absence of any applicable rule or order issued by the President and under conditions defined in applicable regulations prescribed by the Secretary, have the right to require increased production under such lease for purposes of dealing with emergency shortages of oil or gas or other national emergencies;

"(6) provide for suspension or cancellation of the lease pursuant to section 5 of this Act; and

"(7) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease."

(b) Section 8 of the Outer Continental Shelf Lands Act (43 U.S.C. 1337) is further amended by striking out subsection (j), by relettering subsections (c) through (i), and all references thereto, as subsections (g) through (m), respectively, and by inserting immediately after subsection (b) the following new subsections:

"(c) No lease may be issued for an initial five-year period or extended for five additional years, until at least thirty days after the Secretary notifies the Attorney General of the United States and the Federal Trade Commission of the proposed issuance or extension. Such notification shall contain such information as the Attorney General and the Federal Trade Commission may require in order to advise the Secretary as to whether such lease or extension would create or maintain a situation inconsistent with the antitrust laws.

"(d) No lease may be issued or extended if the Secretary finds that an applicant for a lease, or a lessee, is not meeting due diligence requirements on other leases.

"(e) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

"(f) (1) At the time of soliciting nominations for the leasing of lands within three miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of any such State—

"(A) an identification and schedule of the areas and regions offered for leasing;

"(B) all information concerning the geographical, geological, and ecological characteristics of such regions;

"(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

"(D) an identification of any field, geological structure, or trap located within three miles of the seaward boundary of a coastal State.

"(2) Upon receipt of nominations for any lands within three miles of the seaward boundary of any coastal State, the Secretary shall offer the Governor of such coastal State the opportunity to jointly lease any area which the Secretary approves for lease which may contain a field, geological structure, or trap which may be located within both Federal and State owned lands.

"(3) Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to jointly lease any such area. If the Governor accepts the offer, the Secretary and Governor shall jointly offer such area for lease under mutually acceptable terms. If the Governor declines the offer, the Secretary may lease the federally owned portion of such area in accordance with this Act.

"(4) All bonuses, royalties, rents, and net profit shares obtained pursuant to a lease for lands within three miles of the seaward boundary of any coastal State, whether or not such lease is issued jointly by the Secretary and the Governor of such coastal State, shall be placed in an escrow account until such time as the Secretary and the Governor of such coastal State determine, on the basis of geological or other information, the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State."

OUTER CONTINENTAL SHELF OIL AND GAS EXPLORATION

SEC. 206. Section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) is amended to read as follows:

"SEC. 11. OUTER CONTINENTAL SHELF OIL AND GAS EXPLORATION.—(a) (1) Any agency of the United States, and any person whom the Secretary by permit or regulation may authorize, may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations pursuant to any lease issued or maintained pursuant to this Act, and which are not unduly harmful to the marine environment.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any person conducting explorations pursuant to an approved exploration plan on any area under lease to such person pursuant to the provisions of this Act.

"(b) Beginning ninety days after the date of enactment of this subsection, no exploration pursuant to any oil and gas lease issued or maintained under this Act may be undertaken by the holder of such lease, except in accordance with the provisions of this section.

"(c) (1) Prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act, regulations prescribed under this Act, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that if the Secretary determines that (A) any proposed activity under such plan would result in any condition which would permit him to suspend such activity pursuant to regulations prescribed under section 5(a)(1) of this Act, and (B) such proposed activity cannot be modified to avoid such condition, he may delay the approval of such plan.

"(2) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

"(A) a schedule of anticipated exploration activities to be undertaken;

"(B) a description of equipment to be used for such activities;

"(C) the general location of each well to be drilled; and

"(D) such other information deemed pertinent by the Secretary.

"(3) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

"(d) The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.

"(e) (1) If a revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section.

"(2) All exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan.

"(f) The Secretary may, within ninety days after the date of enactment of this section, provide for the approval under subsection (c) of any plan submitted prior to such date of enactment which he finds is in substantial compliance with the provisions of such subsection, and may require the submission of any additional information necessary to bring such plan into such compliance.

"(g) At least once in each frontier area, the Secretary shall seek qualified applicants to conduct geological explorations, including core and test drilling, for oil and gas resources in those areas and subsurface geological structures of the outer Continental Shelf, which the Secretary, upon the basis of information available to him and advice of the Geological Survey of the Department of the Interior, regards as having the greatest likelihood of containing significant oil and gas accumulations."

ANNUAL REPORT

SEC. 207. (a) Section 15 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is amended to read as follows:

"SEC. 15. ANNUAL REPORT BY SECRETARY TO CONGRESS.—Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives the following reports:

"(1) A report on the leasing and production program in the outer Continental Shelf during such fiscal year, which shall include—

"(A) a detailed accounting of all moneys received and expended;

"(B) a detailed accounting of all exploration, exploratory drilling, leasing, development, and production activities;

"(C) a summary of management, supervision, and enforcement activities;

"(D) a list of all shut-in and flaring wells; and

"(E) recommendations to the Congress (i) for improvements in management, safety, and amount of production from leasing and operations in the outer Continental Shelf, and (ii) for resolution of jurisdictional conflicts or ambiguities.

"(2) A report, prepared after consultation with the Attorney General, with recommendations for promoting competition in the leasing of outer Continental Shelf lands, which shall include any recommendations or findings by the Attorney General and any plans for implementing recommended administrative changes and drafts of any proposed legislation, and which shall contain—

"(A) an evaluation of the competitive bidding systems permitted under the provisions of section 8 of this Act, and, if applicable, the reasons why a particular bidding system has not been utilized;

"(B) an evaluation of alternative bidding systems not permitted under section 8 of this Act, and why such system or systems should or should not be utilized;

"(C) an evaluation of the effectiveness of restrictions on joint bidding in promoting competition and, if applicable, any suggested administrative or legislative action on joint bidding;

"(D) an evaluation of present measures and a description of any additional measures to encourage entry of new competitors; and

"(E) an evaluation of present measures and a description of additional measures to increase the supply of oil and gas to independent refiners and distributors.

NEW SECTIONS OF THE OUTER CONTINENTAL SHELF LANDS ACT

SEC. 208. The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end thereof the following new sections:

"SEC. 18. OUTER CONTINENTAL SHELF LEASING PROGRAM.—(a) The Secretary, pursuant to procedures set forth in subsection (c), shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the findings,

purposes, and policies of this Act. The leasing program shall indicate as precisely as possible the size, timing, and location of leasing activity which will best meet national energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

"(1) Management of the outer Continental Shelf shall be conducted in a manner which considers all of the economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

"(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

"(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

"(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

"(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

"(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, intra-coastal navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

"(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

"(F) laws, goals, and policies of affected States;

"(G) policies and plans promulgated by coastal States pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

"(H) recommendations and advice given by any Regional Outer Continental Shelf Advisory Board established pursuant to this Act; and

"(I) whether the oil and gas producing industry has sufficient resources, including equipment and capital to bring about the exploration, development, and production of oil and gas in such regions in an expeditious manner.

"(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

"(4) Leasing activities shall be conducted to assure receipt of fair market value for the oil and gas owned by the Federal Government.

"(b) The leasing program shall include estimates of the appropriations and staff required to—

"(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

"(2) analyze and interpret the exploratory data and any other information which may be compiled under the authority of this Act;

"(3) conduct environmental baseline studies and prepare any environmental impact statement required in accordance with this Act and with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

"(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirements of applicable law and regulations, and with the terms of the lease.

"(c) (1) Within nine months after the date of enactment of this section, the Secretary shall submit to the Congress and to the Attorney General, and publish in the Federal Register, a proposed leasing program.

"(2) Within ninety days after the date of publication of a proposed leasing program, the Attorney General shall submit comments on the anticipated effects of such program upon competition, and any State, local government, Regional Outer Continental Shelf Advisory Board, or other person may submit comments and recommendations as to any aspect of the program.

"(3) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any

comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or local government or Regional Advisory Board was not accepted.

"(4) After the leasing program has been approved by the Secretary, or after June 30, 1977, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

"(d) The Secretary shall review the leasing program approved under this section at least once each year, and he may revise and reapprove such program, at any time, in the same manner as originally developed.

"(e) The Secretary shall, by regulation, establish procedures for—

"(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

"(2) public notice of and participation in development of the leasing program;

"(3) review by State and local governments which may be impacted by the proposed leasing;

"(4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

"(5) coordination of the program with the management program being developed by any State for approval pursuant to section 305 of the Coastal Zone Management Act of 1972 and to assure consistency with the management program of any State which has been approved pursuant to section 306 of such Act.

Such procedures shall be applicable to any revision or reapproval of the leasing program.

"(f) The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this Act. The Secretary shall maintain the confidentiality of all proprietary data or information for such period of time as is provided for in this Act, established by regulation, or agreed to by the parties.

"(g) The heads of all Federal departments and agencies shall provide the Secretary with any nonproprietary information he requests to assist him in preparing the leasing program. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

"SEC. 19. REGIONAL OUTER CONTINENTAL SHELF ADVISORY BOARDS.—(a) The Governors of coastal and affected States may establish Regional Outer Continental Shelf Advisory Boards for their regions with such membership as they may determine, after consultation with the Secretary and the Secretary of Commerce.

"(b) Representatives of the Secretary, the Secretary of Commerce, the Administrator of the Federal Energy Administration, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard, the Administrator of the Environmental Protection Agency, and the Administrator of the Occupational Safety and Health Administration shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section.

"(c) Each Board established pursuant to subsection (a) shall advise the Secretary on all matters relating to outer Continental Shelf oil and gas development, including development of the leasing program required by section 18 of this Act, approval of development and production plans required pursuant to section 25 of this Act, implementation of baseline and monitoring studies, and the preparation of environmental impact statements prepared in the course of the implementation of the provisions of this Act.

"(d) If any Regional Advisory Board or the Governor of any affected State—

"(1) makes specific recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan; and

"(2) submits such recommendations to the Secretary within sixty days after receipt of notice of such proposed lease sale or of such development and production plan, the Secretary shall accept such recommendations, unless he determines they are consistent with national security or the overriding national interest. For purposes of this subsection, a determination of overriding national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner, consistent with the findings, purposes, and policies of this Act. To the extent that recommendations from State Governors or Regional Advisory Boards conflict with each other, the Secretary shall, accept such recommendations which he finds to be the most consistent with the national interest. If the Secretary finds that he cannot accept recommendations made pursuant to this subsection, he shall communicate, in writing, to such Governor or such Board the reasons for rejection of such recommendations.

"SEC. 20. BASELINE AND MONITORING STUDIES.—(a) (1) The Secretary of Commerce, in cooperation with the Secretary, shall conduct a study of any area or region included in any lease sale in order to establish baseline information concerning the status of the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas development in such area or region.

"(2) Each study required by paragraph (1) shall be commenced not later than six months from the date of enactment of this section with respect to any area or region where a lease sale has been held before such date of enactment, and not later than six months prior to the holding of a lease sale with respect to any area or region where no lease sale has been held before such date of enactment. The Secretary of Commerce may utilize information collected in any study prior to the date of enactment of this section in conducting any such study.

"(3) The Secretary of Commerce shall, after being notified of the submission of any development and production plan in an area or region under study, complete such study and submit it to the Secretary prior to the date for final approval of any development and production plan required by section 25 of this Act for any lease area. Failure of the Secretary of Commerce to complete any such study in a lease area shall not, in itself, be a basis for precluding the approval of a development and production plan by the Secretary.

"(4) In addition to developing baseline information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota resulting from chronic low level pollution or large spills associated with outer Continental Shelf production, from the introduction of drill cuttings and drilling muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

"(b) Subsequent to the leasing and developing of any area or region, the Secretary of Commerce shall conduct such additional studies to establish baseline information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

"(c) The Secretary of Commerce shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies or are monitoring the affected human, marine, or coastal environment, the Secretary of Commerce may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary of Commerce may also utilize information obtained from any State or local government entity, or from any person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary of Commerce may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

"(d) As soon as practicable after the end of each fiscal year, the Secretary of Commerce shall submit to the Secretary and to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this Act on the human, marine, and coastal environments.

"SEC. 21. SAFETY REGULATIONS.—(a) (1) Safety regulations which apply to the construction and operation of any fixed structure and artificial island on the outer Continental Shelf shall be promulgated and periodically revised. Such regulations shall be developed by the Secretary and—

"(A) the Administrator of the Environmental Protection Agency or the Secretary of Commerce, or both, for the protection of the marine and coastal environments;

"(B) the Secretary of the Army or the Secretary of the Department in which the Coast Guard is operating, or both, for the avoidance of navigational hazards in the waters above the outer Continental Shelf; and

"(C) the Secretary of Labor or the Secretary of the Department in which the Coast Guard is operating, or both, for occupational safety and health.

"(2) In promulgating regulations under this section, the Secretary shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technology, economically achievable, wherever failure of equipment would have a significant effect on occupational or public health, safety, or the environment.

"(b) Upon the date of enactment of this section, the National Academy of Engineering shall commence a study of the adequacy of existing safety regulations and of technology, equipment, and techniques for operations with respect to the outer Continental Shelf, including the subjects listed in subsection (a) of this section. Not later than nine months after the date of enactment of this section, the results of such study and recommendations for improved safety regulations shall be submitted to the Congress, the Secretary, and the Secretary of the Department in which the Coast Guard is operating.

"(c) (1) Within one year after the date of enactment of this section, the applicable Federal officials, in consultation with other affected Federal agencies and departments, shall complete a review of existing safety regulations, consider the results and recommendations of the study required by subsection (b), and promulgate a complete set of safety regulations (which may incorporate outer Continental Shelf orders) which shall apply to operations on the outer Continental Shelf or any region thereof. Any safety regulation in effect on the date of enactment of this section which such officials find should be retained shall be promulgated pursuant to the provisions of this section, but shall remain in effect until so promulgated. No safety regulation (other than a field order) promulgated pursuant to this subsection shall reduce the degree of safety or protection to the environment afforded by safety regulations previously in effect.

"(2) Within sixty days after the date of enactment of this section, the Secretary of Labor shall promulgate interim regulations or standards pursuant to the Occupational Safety and Health Act of 1970 applying to diving activities in the waters above the outer Continental Shelf, and to other unregulated hazardous working conditions for which he, in consultation with the Secretary and the Secretary of the Department in which the Coast Guard is operating, determines such regulations or standards are necessary. Such regulations or standards may be modified from time to time as necessary, and shall remain in effect until final regulations or standards are promulgated.

"(d) Nothing in this section shall affect or duplicate any authority provided by law to the Secretary of Transportation to establish and enforce pipeline safety standards and regulations.

"(e) The Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any agency or department of the Federal Government and applicable to activities on the outer Continental Shelf. Such compilation shall be revised and updated annually.

"SEC. 22. ENFORCEMENT.—(a) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall strictly enforce safety and environmental regulations promulgated pursuant to this Act. The Secretary and the Secretary of Labor shall strictly enforce occupational and public health regulations promulgated pursuant to this Act. All operations authorized pursuant to this Act shall be regularly inspected for purposes of enforcing applicable regulations.

"(b) All holders of leases and permits under this Act shall—

"(1) be responsible jointly with any employer or subcontractor for the maintenance of occupational safety and health, environmental protection, and other safeguards, in accordance with regulations intended to protect persons, property, and the environment on the outer Continental Shelf pur-

suant to this Act, and any other Act applicable to activities in or on the outer Continental Shelf; and

"(2) allow prompt access, at the site of any operation subject to safety regulations, to any inspector, and provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

"(c) The Secretary, with the concurrence of the Secretary of Labor and the Secretary of the Department in which the Coast Guard is operating, shall, within one hundred and twenty days after the date of enactment of this section, promulgate regulations applicable to the outer Continental Shelf to provide for representatives of the Federal Government to undertake—

"(1) physical observation, at least twice each year, of all installations, fixed or mobile, including rigs, platforms, diving boats, and apparatus;

"(2) the testing of all safety equipment designed to prevent or ameliorate occupational hazards, blowouts, fires, spillages, or other major accidents; and

"(3) periodic onsite inspection without advance notice to the lessee or permittee, to assure compliance with occupational and public health, safety, or environmental protection regulations.

"(d) (1) The Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this Act, and he may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil over a period of thirty days. All holders of leases or permits issued or maintained under this Act shall cooperate with such Secretary in the course of any such investigation.

"(2) The Secretary of Labor shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this Act shall cooperate with such Secretary in the course of any such investigation.

"(3) For purposes of carrying out their responsibilities under this section, the Secretary, the Secretary of Labor, and the Secretary of the Department in which the Coast Guard is operating may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal agency.

"(e) The Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating shall consider any allegation from any person of the existence of a violation of any safety regulation issued under this Act. Any such Secretary who receives an allegation shall respond to such allegation within thirty days, and submit his findings within ninety days, after receipt of such allegation, stating whether or not such alleged violation exists and, if so, what action has been or will be taken.

"(f) In any investigation conducted pursuant to this section, the Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process as in the United States district court. Such Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.

"(g) The Secretary shall, after consultation with the Secretary of Labor and the Secretary of the Department in which the Coast Guard is operating, include in his annual report to Congress required by section 15 of this Act the number of violations of safety regulations alleged by any person, the investigations undertaken, the results of such investigations, the number of proven violations of safety regulations (whether through such allegation and investigation, or in any other manner), the names of the violators, and the action taken with respect to such violators.

"(h) Subject to judicial review, whenever the Secretary finds, after notice and a hearing, that the owner or operator of any lease—

"(1) has, by a repeated course of conduct, failed to comply with safety regulations promulgated under section 21 of this Act, and such failures have resulted in a clear and present danger to occupational or public health, safety, or the environment; or

"(2) has established an overall pattern of failing to comply, without lawful justification, with regulations which are to assure the maximum, efficient, and safe development of such lease or leases; the Secretary shall cancel any such lease or leases which are the subject matter of such violations.

"Sec. 23. CITIZEN SUITS, COURT JURISDICTION, AND JUDICIAL REVIEW.—(a) (1) Except as provided in this section, any person having an interest which is or can be adversely affected may commence a civil action on his own behalf—

"(A) against any person, including the United States, and any other government instrumentality or agency for any alleged violation of any provision of this Act or any regulation promulgated under this Act, or of the terms of any permit or lease issued by the Secretary under this Act; and

"(B) against any Federal official referred to in section 21(a) (1) of this Act where there is alleged a failure of such official to perform any act or duty under this Act which is not discretionary.

"(2) No action may be commenced—

"(A) under subsection (a) (1) (A) of this section—

"(i) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the appropriate Federal official and to any alleged violator; and

"(ii) if such official or the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States with respect to such matter, but in any such action any person adversely affected or aggrieved may intervene as a matter of right; or

"(B) under subsection (a) (1) (B) of this section prior to sixty days after the plaintiff has given notice of such action, in writing under oath, to the Federal Government official, in such manner as such official shall by regulation prescribe, except that such action may be brought immediately after such notification in any case in which the violation alleged constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

"(3) In any action commenced pursuant to this section, the appropriate Federal official or the Attorney General, if not a party, may intervene as a matter of right.

"(4) A court, in issuing any final order in any action brought pursuant to subsection (a) (1) or subsection (c) of this section, may award costs of litigation, including reasonable attorneys' fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(5) Except as provided in subsection (c) of this section, nothing in this section shall restrict any right which any person or class of persons may have under this or any other Act to seek enforcement of any provision of this Act and any regulation promulgated under this Act, or to seek any other relief, including relief against the appropriate Federal official.

"(b) Except as provided in subsection (c) of this section, the United States district courts shall have jurisdiction of cases and controversies arising out of, or in connection with (1) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the natural resources of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such natural resources, or (2) the cancellation, suspension, or termination of a lease or permit under this Act. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place where the cause of action arose.

"(c) (1) Any action of the Secretary to approve a leasing program pursuant to section 18 of this Act shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia.

"(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this Act shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.

"(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review

of the Secretary's action within sixty days after the date of such action, and (D) promptly transmits copies of the petition to the Secretary and to the Attorney General of the United States.

"(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a).

"(5) The Secretary shall file in the appropriate court the record of any public hearings required by this Act and any additional information upon which the Secretary based his decision, as required by section 2112 of title 28, United States Code. Specific objections to the action of the Secretary shall be considered by the court only if such objections have been submitted to the Secretary during the administrative proceedings related to the actions involved.

"(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

"(7) Upon the filing of the record with the court, pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

"(d) Except as to causes of action which the court considers of greater importance, any action under this section shall take precedence on the docket over all other causes of action and shall be set for hearing at the earliest practical date and expedited in every way.

"SEC. 24. REMEDIES AND PENALTIES.—(a) At the request of the Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act or any regulation or order issued under this Act.

"(b) If any person fails to comply with any provision of this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$10,000 for each day of the continuance of such failure. The Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating, as applicable, may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

"(c) Any person who knowingly and willfully (1) violates any provision of this Act, or any regulation or order issued under the authority of this Act designed to protect occupational or public health, safety, or the environment or conserve natural resources, (2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act, or (4) reveals any data or information required to be kept confidential by this Act, shall upon conviction, be punished by a fine of not more than \$100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorded remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

"(e) The remedies and penalties prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

"SEC. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION.—(a) (1) Prior to development and production pursuant to an oil and gas lease issued under this Act after the date of enactment of this section, or pursuant to an oil and gas lease issued under this Act and outstanding on the date of enactment of this section, with respect to which development and production has not yet commenced, the lessee shall submit a development and production plan (hereinafter in this section referred to as a 'plan') to the Secretary, for approval pursuant to this section.

"(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development or production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

"(3) Except for interpretive data, which, pursuant to regulations prescribed by the Secretary, constitute confidential or privileged information, the Secretary, within ten days after receipt of a plan and statement, shall (A) submit such plan and statement to the Governor of any affected State and to any appropriate Regional Outer Continental Shelf Advisory Board established pursuant to section 19 of this Act, and (B) make such plan and statement available to any other appropriate interstate regional entity, the executive of any affected local government area, and the public.

"(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act unless such lease requires that development and production of reserves be carried out in accordance with a plan which complies with the requirements of this section.

"(c) A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

"(1) the specific work to be performed;

"(2) a description of all offshore facilities and operations proposed by the lessee or known by him (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

"(3) the environmental safeguards to be implemented on the Outer Continental Shelf and how such safeguards are to be implemented;

"(4) all safety standards to be met and how such standards are to be met;

"(5) an expected rate of development and production and a time schedule for performance; and

"(6) such other relevant information as the Secretary may by regulation require.

"(d) (1) After review of a plan submitted pursuant to this section in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 432i et seq.), the Secretary shall declare his findings as to whether development and production pursuant to the lease or set of leases (which set includes such lease and other leases which cover adjacent or nearby areas to the area covered by such lease) is a major Federal action.

"(2) The Secretary shall at least once, prior to major development in any structure, area, or region of the Outer Continental Shelf where there has been no previous development of oil and natural gas, declare development and production pursuant to a lease or set of leases to be a major Federal action.

"(3) The Secretary may require lessees on adjacent or nearby leases to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 shall commence.

"(e) If development and production pursuant to a plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, any appropriate Regional Outer Continental Shelf Advisory Board, any appropriate interstate regional entity, and the executive of any affected local government area, for review and comment, and shall make such draft available to the general public.

"(f) If development and production pursuant to a plan is not found to be a major Federal action, the Governor of any affected State, any appropriate Regional Outer Continental Shelf Advisory Board, and the executive of any affected

local government area shall have ninety days from receipt of the plan from the Secretary to submit comments and recommendations. Such comments and recommendations shall be made available to the public upon request. In addition, an interested person may submit comments and recommendations.

"(g) (1) After reviewing the record of any public hearing held with respect to a plan pursuant to the National Environmental Policy Act of 1969 or the comments and recommendations submitted under subsection (f) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsection (d) of this section, or one hundred and twenty days after the period provided for comment under subsection (f) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the human, marine, or coastal environment, except that any modification requested by the Secretary shall be, to the maximum extent practicable, consistent with the coastal zone management programs of affected States approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), and with any valid exercise of authority by the State involved or any political subdivision thereof. The Secretary shall disapprove a plan only (A) if the lessee fails to demonstrate that he can comply with the requirements of this Act and other applicable Federal law, (B) if the plan is not and cannot be made, to the maximum extent practicable, consistent with the coastal zone management programs of affected States approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), or with any valid exercise of authority by the State involved or any political subdivision thereof, or (C) if because of exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, the proposed plan cannot be modified to insure a safe operation. If a plan is disapproved under clause (C) of this paragraph, the lease shall be deemed canceled and the lessee shall be entitled to reimbursement by the United States for all consideration paid for the lease, plus interest thereon from the date of payment to the date of reimbursement, and for all direct expenditures made after the date of the issuance of such lease and in connection with exploration or development pursuant to the lease.

"(2) The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

"(h) The Secretary may approve any revision of an approved plan proposed by the operator if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, or is the only means available to avoid substantial economic hardship to the lessee, to the extent such revision is consistent with protection of the marine and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (g) of this section.

"(i) Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may, after notice to such owner of such failure and expiration of any reasonable period allowed for corrective action, and after an opportunity for a hearing, be forfeited, canceled, or terminated, subject to the right of judicial review, in accordance with the provisions of section 23(b) of this Act. Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

"SEC. 26. OUTER CONTINENTAL SHELF OIL AND GAS INFORMATION PROGRAM.—

(a) (1) (A) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this Act shall provide the Secretary access to all data obtained from such activity and shall provide copies of such specific data, and any interpretation of any such data, as the Secretary may request. Such data and interpretation shall be provided in accordance with regulations which the Secretary shall prescribe.

"(B) If an interpretation provided pursuant to subparagraph (A) of this paragraph is made in good faith by the lessee or permittee, such lessee or permittee shall not be held responsible for any consequence of the use of or reliance upon such interpretation.

"(C) Whenever any data is provided to the Secretary, pursuant to subparagraph (A) of this paragraph—

"(i) by a lessee, in the form and manner of processing which is utilized by such lessee in the normal conduct of his business, the Secretary shall pay the reasonable cost of reproducing such data; and

"(ii) by a lessee, in such other form and manner of processing as the Secretary may request, or by a permittee, the Secretary shall pay the reasonable cost of processing and reproducing such data.

pursuant to such regulations as he may prescribe.

"(2) Each Federal agency shall provide the Secretary with any data obtained by such Federal agency conducting exploration pursuant to section 11 of this Act, and any other information which may be necessary or useful to assist him in carrying out the provisions of this Act.

"(b) (1) Information provided to the Secretary pursuant to subsection (a) of this section shall be processed, analyzed, and interpreted by the Secretary for purposes of carrying out his duties under this Act.

"(2) As soon as practicable after information provided to the Secretary pursuant to subsection (a) of this section is processed, analyzed, and interpreted, the Secretary shall make available to the affected States a summary of data designed to assist them in planning for the onshore impacts of possible oil and gas development and production. Such summary shall include estimates of (A) the oil and gas reserves in areas leased or to be leased, (B) the size and timing of development if and when oil or gas, or both, is found, (C) the location of pipelines, and (D) the general location and nature of onshore facilities.

"(c) The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information. Such regulations shall include a provision that no such information will be transmitted to any affected State or any Regional Advisory Board unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

"(d) (1) The Secretary shall transmit to any affected State and any appropriate Regional Advisory Board—

"(A) a copy of all relevant actual or proposed programs, plans, reports, environmental impact statements, tract nominations (including negative nominations) and other lease sale information, any similar type of relevant information, and all modifications and revisions thereof and comments thereon, prepared or obtained by the Secretary pursuant to this Act;

"(B) any relevant information prepared by the Secretary pursuant to subsection (b) of this section; and

"(C) any relevant information received by the Secretary pursuant to subsection (a) of this section, subject to any applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

"(2) Notwithstanding any other provision of this section, the Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Secretary shall designate, any privileged information received by the Secretary regarding any activity adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted. Knowledge obtained by such State during such inspection shall be subject to applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

"(e) Any provision of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this Act is expressly preempted by the provisions of this section, to the extent that it applies to such information.

"(f) If the Secretary finds that any State cannot or does not comply with the regulations issued under subsection (c) of this section, he shall thereafter withhold transmittal of privileged information to such State until he finds that such State can and will comply with such regulations.

"(g) The regulations prescribed pursuant to subsection (c) of this section, and the provisions of subsection 552(b) (9) of title 5, United States Code, shall not apply to any information obtained in the conduct of geological or geophysical explorations by any Federal agency (or any person acting under a service contract with such agency), pursuant to section 11 of this Act.

"Sec. 27. FEDERAL PURCHASE AND DISPOSITION OF OIL AND GAS.—(a) (1) Except as may be necessary to comply with the provisions of section 6 and 7 of this Act, all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease or permit issued or maintained in accordance with this Act, shall, on demand of the Secretary, be paid in oil or gas.

"(2) The United States shall have the right to purchase not to exceed 16% per centum by volume of the oil and gas produced pursuant to a lease or permit issued in accordance with this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the wellhead of the oil and gas saved, removed or sold, except that any oil or gas obtained by the United States as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

"(3) Title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Administrator of the Federal Energy Administration, for disposal within the Federal Government.

"(b) (1) Upon the commencement of production of oil from the outer Continental Shelf pursuant to any lease issued after the date of enactment of this subsection, the Secretary, pursuant to such terms as he determines and in the absence of any provision of law which provides for the mandatory allocation of such oil in amounts and at prices determined by such provision, or regulations issued in accordance with such provision, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the oil (A) obtained by the United States pursuant to such lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a) (2) of this section.

"(2) Whenever, after consultation with the Administrator of the Federal Energy Administration, the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, the Secretary may dispose of any oil which is taken as a royalty or net profit share occurring or reserved to the United States pursuant to any lease issued or maintained under this Act, or purchased by the United States pursuant to subsection (a) (2) of this section, by conducting a lottery for the sale of such oil, or may equitably allocate such oil among the competitors for the purchase of such oil, at the regulated price, or if no regulated price applies, at its fair market value. The Secretary shall limit participation in any lottery or allocated sale to assure such access and shall publish notice of such sale, and the terms thereof, at least thirty days in advance of such sale. Such notice shall include qualifications for participation, the amount of oil to be sold, and any limitation in the amount of oil which any participant may be entitled to purchase.

"(3) Whenever a provision of law is in effect which provides for the mandatory allocation of such oil in amounts or at prices determined by such provision, or regulations issued in accordance with such provision, the Secretary may only sell such oil in accordance with such provision of law or regulations.

"(c) (1) Except as provided in paragraph (2) of this subsection, upon the commencement of production of gas pursuant to any lease issued after the date of enactment of this subsection, the Secretary, pursuant to such terms as he determines, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the gas (A) obtained by the United States pursuant to a lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a) (2) of this section.

"(2) Whenever, after consultation with and advice from the Administrator of the Federal Energy Administration and the Chairman of the Federal Power Commission, the Secretary determines that an emergency shortage of natural gas is threatening to cause severe economic or social dislocation in any region of the United States and that such region can be serviced in a practical, feasible, and efficient manner by royalty, net profit share, or purchased gas obtained pur-

suant to the provisions of this subsection, the Secretary may allocate or conduct a lottery for the sale of such gas, and shall limit the sale of such gas to any person servicing such region, but he shall not sell any such gas for more than its regulated price, or, if no regulated price applies, less than its fair market value. Prior to allocating any gas pursuant to this paragraph, the Secretary shall consult with the Federal Power Commission.

"(d) The lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Secretary, and which is not transferred pursuant to subsection (a) (3) of this section, and shall pay to the United States a cash amount equal to the regulated price, or, if no regulated price applies, the fair market value of the oil or gas so obtained. In the event that net profit share oil or gas produced pursuant to the bidding system authorized in subparagraphs (G) and (H) of section 8(a) (1) of this Act is sold back to the lessee or lessees, each party shall be eligible to purchase a pro rata share according to its per centum interest.

"(e) As used in this section—

"(1) the term 'regulated price' means the highest price—

"(A) at which Federal oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 and any rule or order issued under such Act;

"(B) at which natural gas may be sold to natural-gas companies pursuant to the Natural Gas Act and any rule or order issued under such Act; or

"(C) at which either Federal oil or gas may be sold under any other provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil or gas produced pursuant to a lease or permit issued in accordance with this Act; and

"(2) the term 'small refiner' means an owner of an existing refinery or refineries, including refineries not in operation, who qualifies as a small business concern under the rules of the Small Business Administration and who is unable to purchase in the open market an adequate supply of crude oil to meet the needs of his existing refinery capacities.

"(f) Nothing in this section shall prohibit the right of the United States to purchase any oil or gas produced on the outer Continental Shelf, as provided in section 12(b) of this Act.

"Sec. 28. LIMITATIONS ON EXPORT.—(a) Except as provided in subsection (d), any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

"(b) Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

"(c) The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

"(d) The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States."

TITLE III—OFFSHORE OIL SPILL POLLUTION FUND

DEFINITIONS

Sec. 301. As used in this title, unless the context indicates otherwise, the term—

(1) "cleanup costs" means all reasonable and actual costs, including administrative and other costs, to the Federal Government, to any State or local government, or to any foreign government, or to their contractors or

subcontractors, of (A) removing or attempting to remove oil discharged from any offshore facility or vessel, or (B) taking other measures to prevent such discharge, or to reduce or mitigate damages to the public health or welfare, or to public property, including shorelines, beaches, and the natural resources of the marine environment;

(2) "damages" means compensation sought pursuant to this title by any person suffering any direct and actual injury proximately caused by the discharge of oil from an offshore facility or vessel, except that such term does not include clean-up costs;

(3) "discharge" includes any spilling, leaking, pumping, pouring, emptying, or dumping, regardless of whether it occurred intentionally or unintentionally;

(4) "offshore facility" includes any oil refinery, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which (A) is used, or is capable of being used, to drill for, pump, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf of the United States, and (B) is located seaward of the high water mark, except that such term does not include a vessel or a deepwater port;

(5) "Fund" means the Offshore Oil Pollution Compensation Fund established under section 302(a) of this title;

(6) "owner" means (A) with respect to an offshore facility, any person owning such facility, whether by lease, permit, contract, license, or other form of agreement, (B) with respect to any facility abandoned without prior approval of the Secretary of the Interior, the person who owned such facility immediately prior to such abandonment, and (C) with respect to a vessel, any person owning such vessel;

(7) "operator" means (A) with respect to an offshore facility, any person operating such facility, whether by lease, permit, contract, license, or other form of agreement, and (B) with respect to a vessel, any person operating or chartering by demise such vessel;

(8) "person" means an individual, a public or private corporation, partnership, or other association, or a government entity;

(9) "person in charge" means the individual immediately responsible for the operations of an offshore facility or vessel;

(10) "Secretary" means the Secretary of Transportation;

(11) "revolving account" means the account in the Treasury of the United States which is established under section 302(b) of this title;

(12) "incident" means any occurrence or series of related occurrences, involving one or more offshore facilities or vessels, which cause or pose an imminent threat of oil pollution; and

(13) "vessel" means every description of watercraft or other contrivance, whether or not self-propelled, which is used to transport oil directly from an offshore facility.

ESTABLISHMENT OF THE FUND AND THE REVOLVING ACCOUNT

Sec. 302. (a) There is established within the Department of Transportation an Offshore Oil Pollution Compensation Fund. The Fund may sue or be sued in its own name.

(b) There is established in the Treasury of the United States a revolving account, without fiscal year limitation, which shall be available to the Fund to carry out the provisions of this title.

PROHIBITION

Sec. 303. The discharge of oil from any offshore facility or vessel, in quantities which the President under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)) determines to be harmful, is prohibited.

NOTIFICATION

Sec. 304. (a) Any person in charge of an offshore facility or vessel shall, as soon as he has knowledge of any discharge of oil from such offshore facility or vessel which may be in violation of section 303 of this title, immediately notify the Secretary of such discharge.

(b) Any person in charge of an offshore facility or vessel who fails to immediately notify the Secretary, as required by subsection (a) of this section, shall,

upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both, except that no person convicted under this section shall also be convicted for the same failure to notify under section 311(b)(5) of the Federal Water Pollution Control Act.

(c) Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any person providing such notification in any criminal case, except a prosecution for perjury or for giving a false statement.

REMOVAL OF DISCHARGED OIL

SEC. 305. (a) Whenever any oil is discharged from any offshore facility or vessel in violation of section 303 of this title, the President shall act to remove or arrange for the removal of such oil, unless he determines such removal will be done properly and expeditiously by the owner or operator of such offshore facility or vessel.

(b) Removal of oil and actions to minimize damage from oil discharged shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act.

(c) Whenever the President acts to remove a discharge of oil pursuant to this section, he is authorized to draw upon the money available in the revolving account. Such money shall be used to pay promptly for all cleanup costs incurred by the President in removing such oil or in minimizing damage caused by such oil discharge.

DUTIES AND POWERS

SEC. 306. (a) In order to carry out the purposes of this title, the Secretary shall—

- (1) administer and maintain the Fund, in accordance with the provisions of this title;
- (2) establish regulations and provide for the fair and expeditious settlement of claims, in accordance with section 313 of this title;
- (3) provide public access to information, in accordance with section 319(a) of this title;
- (4) submit an annual report, in accordance with section 320 of this title; and
- (5) perform such other functions as are prescribed by law.

(b) In the performance of his duties under this title, the Secretary is authorized to—

- (1) utilize, with the consent of the agency concerned, the services or personnel, on a reimbursable or replacement basis or otherwise, of any Federal Government agency, of any State or local government agency, or of any organization, to perform such functions on behalf of the Fund as are necessary or appropriate;
- (2) make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this title;
- (3) conduct such studies and investigations, obtain such data and information, and hold such meetings or public hearings as may be necessary or appropriate to facilitate the exercise of any authority granted to, or the performance of any duty imposed on, the Fund under this title;
- (4) enter into such contracts, agreements, and other arrangements as are deemed necessary or appropriate for the acquisition of material, information, or other assistance related to, or required by, the implementation of this title; and
- (5) issue and enforce orders during proceedings conducted pursuant to this title, including issuing subpoenas, administering oaths, compelling the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, and the taking of depositions.

RECOVERABLE DAMAGES

SEC. 307. Damages may be recovered under this title for—

- (1) the value of any loss or injury, at the time such loss or injury is incurred, with respect to any real or personal property which is damaged or destroyed as a result of a discharge of oil;

(2) (A) the cost to the owner of restoring, repairing, or replacing any real or personal property which is damaged or destroyed by a discharge of oil, (B) any income necessarily lost by such owner during the time such property is being restored, repaired, or replaced, and (C) any reduction in the value of such property caused by such discharge;

(3) any loss of income or impairment of earning capacity for a period of not to exceed one year due to damages to real or personal property, or to natural resources, without regard to ownership of such property or resources, which are damaged or destroyed by a discharge of oil, if the claimant derives at least 25 percentum of his earnings from activities which utilize such property or natural resources;

(4) any costs and expenses incurred by the Federal Government or any State government in the restoration, repair, or replacement of natural resources which are damaged or destroyed by a discharge of oil; and

(5) any loss of tax, royalty, rental, or net profit share revenue by the Federal Government or any State or local government for a period of not to exceed one year due to injury to real or personal property resulting from a discharge of oil.

CLEANUP COSTS AND DAMAGES

SEC. 308. (a) All cleanup costs incurred by the President, the Secretary, or any other Federal, State, or local official or agency, in connection with a discharge of oil shall be borne by the owner and operator of the offshore facility or vessel from which the discharge occurred.

(b) Notwithstanding any other provision of law and except as provided in subsection (d) of this section, the owner and operator of an offshore facility shall be held jointly and severally liable, without regard to fault, for damages which result from a discharge of oil from such offshore facility. Such liability shall not exceed \$35,000,000, except that if it can be shown that (1) such damages were the result of gross negligence or willful misconduct within the privity and knowledge of such owner or operator, or of the person in charge of such offshore facility, or (2) such discharge was the result of a violation of applicable safety, construction, or operating standards or regulations, such owner and operator shall be jointly and severally liable for the full amount of such damages.

(c) Notwithstanding any other provision of law and except as provided in subsection (d) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for damages which result from a discharge of oil from such vessel. Such liability shall not exceed \$150 per gross registered ton, except that if it can be shown that (1) such damages were the result of gross negligence or willful misconduct within the privity and knowledge of such owner or operator, or of the person in charge of such vessel, or (2) such discharge was the result of a violation of applicable safety, construction, or operating standards or regulations, such owner and operator shall be jointly and severally liable for the full amount of such damages.

(d) No liability shall be imposed under subsection (b) or (c) of this section to the extent the owner or operator establishes that the discharge of oil or that any damages resulting from such discharge were caused by (1) an act of war, (2) the negligent or intentional act of the damaged party or of any third party (including any government entity), or (3) a natural phenomenon of an exceptional inevitable, and irresistible character.

(e) (1) In any case in which the owner or operator of an offshore facility is held liable, pursuant to this section for cleanup costs and damages resulting from a discharge of oil, such owner or operator shall be subrogated, if such discharge was the result of the unseaworthiness of a vessel or the negligence of the owner, operator, or person in charge of the vessel, to the rights of any person who is entitled to recover any damages against such owner, operator, or person in charge.

(2) In any case in which the owner or operator of a vessel is held liable, pursuant to this section, for cleanup costs and damages resulting from a discharge of oil, such owner or operator shall be subrogated, if such discharge was caused by negligence on the part of the owner, operator, or person in charge of an offshore facility, to the rights of any person who is entitled to recover any damages against such owner, operator, or person in charge.

(3) The provisions of this section shall not in any way affect or limit any rights which an owner or operator of an offshore facility or vessel, or the Fund,

may have against any third party whose acts may have caused or contributed to a discharge of oil.

DISBURSEMENTS FROM THE REVOLVING ACCOUNT

Sec. 300. (a) Amounts in the revolving account shall be available for disbursement and shall be disbursed by the Fund for only the following purposes:

(1) Administrative and personnel expenses of the Fund.

(2) Cleanup costs resulting from the discharge of oil which are incurred pursuant to this title or pursuant to any State or local law, and costs of the removal of oil incurred by the owner or operator of an offshore facility or vessel to the extent that the discharge of such oil was caused solely by an act of war or negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

(3) Subject to the provisions of section 313 of this title, all damages not actually compensated pursuant to section 308 (b) or (c) of this title.

(b) Payment of compensation by the Fund shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover cleanup costs or damages from the person responsible for such discharge. The Fund shall diligently pursue recovery for any such subrogated rights.

(c) Notwithstanding any other provision of this section, the Fund shall not be liable to pay cleanup costs and damages of any claimant to the extent that the negligence or intentional act of such claimant caused the discharge.

(d) In all claims or actions by the Fund against the owner, operator, or person providing financial responsibility, the Fund shall recover except as otherwise provided in this title, the amount of the Fund to the owner, operator, such person providing financial responsibility, the Fund shall recover (1) except as otherwise provided in this title, the amount the Fund has paid to the claimant or to any government entity undertaking cleanup operations, without reduction, and (2) interest on that amount, at the existing commercial interest rate, from the date upon which the request for reimbursement was issued from the Fund to the owner, operator, or such person, to the date on which the Fund is paid by such owner, operator, or person.

(e) Whenever the amount in the revolving account is not sufficient to pay cleanup costs and damages for which the Fund is liable pursuant to this section, the Fund may issue, in an amount not to exceed \$500,000,000, notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such notes or other obligations shall bear interest at a rate to be determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. Moneys obtained by the Fund under this subsection shall be deposited in the revolving account, and redemptions of any such notes or other obligations shall be made by the Fund from the revolving account. The Secretary of the Treasury shall purchase any such notes or other obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under this subsection. The Secretary of the Treasury may sell any such notes or other obligations at such times and prices and upon such terms and conditions as he shall determine in his discretion. All purchases, redemptions, and sales of such notes or other obligations by such Secretary of the Treasury shall be treated as public debt transactions of the United States.

FEE COLLECTION; DEPOSITS IN REVOLVING ACCOUNT

Sec. 310. (a) (1) The Secretary shall levy and collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such is transferred from a well to a pipeline or vessel. Any oil upon which a fee has been levied pursuant to this subsection shall not be subject to a subsequent levy under this subsection.

(2) The collection of the fee imposed pursuant to paragraph (1) of this subsection shall continue until the amount in the revolving account totals at least \$100,000,000, whereupon collection of such fee may be suspended. Thereafter, the Secretary shall, from time to time and in accordance with the limitation set

forth in the first sentence of paragraph (1) of this subsection, modify by regulation the amount of the fee, if any, to be collected under this subsection in order to maintain the revolving account at a level of not less than \$100,000,000 and not more than \$200,000,000. For purposes of this paragraph, all sums deposited pursuant to subsection (b) of this section shall be included in the calculation of the balance in the revolving account.

(b) All sums received through fee collection, reimbursements, fines, penalties, investments, and judgments pursuant to this title shall be deposited in the revolving account, except that whenever the amount in the revolving account exceeds \$200,000,000, the excess sums shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.

(c) All sums not needed for the purposes specified in this title shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury.

FINANCIAL RESPONSIBILITY

SEC. 311. (a) Each owner or operator of an offshore facility shall establish and maintain, under rules and regulations prescribed by the President, evidence of financial responsibility based on the capacity of the offshore facility and other relevant factors. Financial responsibility may be established by any one, or a combination of, the following methods acceptable to the President: (1) evidence of insurance, (2) surety bonds, (3) qualification as a self-insurer, or (4) other evidence of financial responsibility satisfactory to the President.

(b) Each owner or operator of a vessel over three hundred gross registered tons (other than a vessel which is not self-propelled and which does not carry oil as cargo or fuel) shall establish and maintain, under rules and regulations prescribed by the Federal Maritime Commission, evidence of financial responsibility based on the liability requirements of this title and the tonnage of the vessel. In cases where an owner or operator owns, operates, or chartered more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one, or combination, of the following methods acceptable to the President: (1) evidence of insurance, (2) surety bonds, (3) qualification as a self-insurer, or (4) other evidence of financial responsibility satisfactory to the President.

(c) Any claim for cleanup costs and damages by any claimant or by the Fund may be brought directly against the surety, the insurer, or any other person providing financial responsibility.

(d) Any person who fails to comply with the provisions of this section or any regulation issued under this section shall be subject to a fine of not more than \$25,000.

(e) The President shall increase the requirements established under this section and the limit of liability under section 308 of this title annually, by an amount equal to the annual percentage increase in the wholesale price index.

(f) No owner or operator of an offshore facility or vessel who establishes and maintains evidence of financial responsibility in accordance with this section shall be required under any State law, rule, or regulation to establish any other evidence of financial responsibility in connection with liability for the discharge of oil from such offshore facility or vessel. Evidence of compliance with the financial responsibility requirement of this section shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such offshore facility or vessel.

TRUSTEE OF NATURAL RESOURCES

SEC. 312. The Secretary, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for damages to such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

CLAIMS PROCEDURE

SEC. 313. (a) The Secretary shall prescribe, and may from time to time amend, regulations for the filing, processing, settlement, and adjudication of claims for cleanup costs and damages resulting from the discharge of oil from an offshore facility or vessel.

(b) (1) Whenever the Secretary receives information from any person alleging the discharge of oil from any offshore facility or vessel in violation of section 303 of this title, he shall notify the owner and operator of such offshore facility or vessel of such allegation. Such owner or operator may, within five days after receiving such notification, deny such allegation, or deny liability for damages for any of the reasons set forth in section 308(d) of this title.

(2) Any denial made pursuant to paragraph (1) of this subsection shall be adjudicated in accordance with the provisions of subsection (1) of this section.

(c) (1) If a denial is not made pursuant to subsection (b) (1) of this section, the owner and operator, or the person providing financial responsibility, shall advertise, in accordance with regulations promulgated by the Secretary, in any area where damages may occur, the procedures under which claims may be presented to such owner and operator or such person providing financial responsibility. The Secretary shall publish the text of such advertisement, in modified form if necessary, in the Federal Register. If any person fails to make any advertisement required by this paragraph, the Secretary shall do so and such person shall pay the costs of such advertisement.

(2) If a denial is made pursuant to subsection (b) of this section, the Secretary shall advertise and publish procedures under which claims may be presented to the Secretary for payment by the Fund from the revolving account.

(3) Any advertisement made under this subsection shall commence no later than fifteen days after the date of the notification and shall continue for a period of no less than thirty days. Such advertisement shall be repeated thereafter in such modified form as may be necessary, but not less frequently than once each calendar quarter for a total period of five years.

(d) (1) Any claim presented to any person under subsection (e) (1) of this section, or to the Secretary for payment from the Fund, shall be presented within one year after the date of discovery of any damages for which such claim is made, except that no such claim may be presented after the end of the five-year period beginning on the date on which advertising was commenced pursuant to subsection (c) of this section.

(2) Each person's damage claims arising from one incident which are presented to the Secretary shall be stated in one form, which may be amended to include new claims as they are discovered. Damages which are known or reasonably should be known, and which are not included in the claim at the time compensation is made, shall be deemed waived.

(e) (1) Except as provided in subsection (f) of this section, all claims shall be presented (A) to the owner and operator, or (B) to the person providing financial responsibility.

(2) Any person to whom a claim has been presented pursuant to paragraph (1) of this subsection shall promptly notify the claimant of the rights which such claimant may have under this title and of the Secretary of receipt of such claim.

(f) The following claims may be presented to the Secretary for payment by the Fund from the revolving account:

(1) Any claim for damages resulting from any discharge with respect to which a denial has been made pursuant to subsection (b) (1) of this section.

(2) Any claim which has been presented to any person pursuant to subsection (e) (1) of this section, if such person—

(A) has not accepted liability for such claim for any such reason,

(B) submits to the claimant a written offer for settlement of the claim, which the claimant rejects for any reason, or

(C) has not settled such claim by agreement with the claimant within sixty days after the date on which (i) such claim was presented, or (ii) advertising was commenced pursuant to subsection (c) of this section, whichever date is later.

(g) In the case of a claim which has been presented to any person under subsection (e) (1) of this section, and which may be presented to the Secretary under subsection (f) (2) of this section, such person shall, within two days after a request by the claimant, transmit directly to the Secretary such claim and such other supporting documents as the Secretary may by regulation prescribe, and such claim shall be deemed presented to the Secretary for payment by the Fund.

(h) (1) Except as provided in paragraph (2) of this subsection, the Secretary shall use the facilities and services of private insurance and claims adjusting organizations in administering this section and may contract to pay compensation for such facilities and services. Any contract made under the provisions of this

paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, upon a showing by the Secretary that advertising is not reasonably practicable, and advance payments may be made. A payment to a claimant, for a single claim in excess of \$100,000, or two or more claims aggregating in excess of \$200,000, shall be first approved by the Secretary.

(2) In extraordinary circumstances in which the services of such private organizations are inadequate, the Secretary may use Federal personnel to administer the provisions of this section, to the extent necessitated by such extraordinary circumstances.

(1) The following matters in dispute shall be submitted to the Secretary and adjudicated pursuant to the provisions of this section:

(1) Upon the petition of a claimant, in the case of a claim which has been presented to the Secretary for payment by the Fund, and in which the Secretary—

(A) has, for any reason, denied liability for such claim; or

(B) has not settled such claim by agreement with such claimant within ninety days after the date on which (i) such claim was presented to the Secretary, or (ii) advertising was commenced pursuant to subsection (c) (2) of this title, whichever date is later.

(2) Upon the petition of the owner and operator or the person providing financial responsibility, who is or may be liable for cleanup costs and damages pursuant to section 308 of this title—

(A) any denial made pursuant to subsection (b) (1) of this section;

(B) any objection to an exception to the limit of liability set forth in section 308 (b) or (c) of this title; and

(C) the amount of any payment or proposed payment by the Fund which may be recovered from such owner and operator, or such person providing financial responsibility, pursuant to section 309(d) of this title.

(J) (1) Upon receipt of any matter in dispute submitted for adjudication pursuant to subsection (i) of this section, the Secretary shall refer such matter to a hearing examiner appointed under section 3105 of title 5, United States Code. Such hearing examiner shall promptly adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code.

(2) For purposes of any hearing conducted pursuant to this subsection, the hearing examiner shall have the power to administer oaths and subpoena the attendance and testimony of witnesses and the production of books, records, and other evidence relative or pertinent to the issues presented for determination.

(3) A hearing conducted under this subsection shall be conducted within the United States judicial district within which the matter in dispute occurred, or, if such matter occurred within two or more districts, in any of the affected districts or, if such matter in dispute occurred outside of any district, in the nearest district.

(k) Upon a decision by the hearing examiner and in the absence of a request for judicial review, any amount to be paid from the revolving account shall be certified to the Fund which shall promptly disburse the award. Such decision shall not be reviewable by the Secretary.

JUDICIAL REVIEW

SEC. 314. (a) Any person who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner may, no later than sixty days after such decision is made, seek judicial review of such decision (A) in the United States court of appeals for the circuit in which the damage occurred, or, if such damage occurred outside of any circuit, in the United States court of appeals for the nearest circuit, or (B) in the United States Court of Appeals for the District of Columbia.

(b) In any case in which the person responsible for the discharge, or the Fund, seeks judicial review, attorneys' fees and court costs shall be awarded to the claimant if the decision of the hearing examiner is affirmed.

CLASS ACTIONS

SEC. 315. (a) The Attorney General may act on behalf of any group of damaged citizens which the Secretary determines would be more adequately represented as a class in the recovery of claims under this title. Sums recovered shall be distributed to the members of such group.

(b) If, within ninety days after a discharge of oil in violation of section 303 of this title has occurred, the Attorney General fails to act on behalf of a group who may be entitled to compensation, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this subsection.

(c) In any case in which the number of members of the class seeking the recovery of claims under this title exceeds one thousand, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c) (2) of the Federal Rules of Civil Procedure.

REPRESENTATION

Sec. 316. The Secretary shall initially request the Attorney General to promptly institute court actions and to appear and represent the Fund for all claims under this title. Unless the Attorney General notifies the Secretary that he will institute such action or will otherwise appear within a reasonable time, attorneys appointed by the Secretary shall appear and represent the Fund.

JURISDICTION AND VENUE

Sec. 317. (a) The United States district courts shall have original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district (1) wherein the damage complained of occurred, or, if such damage occurred outside of any district, in the nearest district, or (2) wherein the defendant resides, may be found, or has its principal office. For the purposes of this section, the Fund shall reside in the District of Columbia.

ACCESS TO RECORDS

Sec. 318. (a) Each person responsible for contributing to the Fund in accordance with this title shall keep such records and furnish such information as the Secretary shall prescribe in regulations. Collection shall be at such times and such manner as shall be prescribed in such regulations.

(b) The Secretary shall have access to any books, documents, papers, and records of such person in order to undertake regular examinations of the audits on the collection of fees.

(c) The Comptroller General shall have access to any books, documents, papers, records, and other information of any person liable to contribute to the Fund, and of the Fund.

PUBLIC ACCESS TO INFORMATION

Sec. 319. (a) Copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning liability and compensation for damages resulting from the discharge of oil from an offshore facility or vessel shall be made available to the public for inspection, and shall be available for the purpose of reproduction at a reasonable cost, to the public upon identifiable request.

(b) Nothing contained in this section shall be construed to require the release of any information of the kind described in subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

ANNUAL REPORT

Sec. 320. Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives (1) a report on the administration of the Fund during such fiscal year, (2) a summary of the management and enforcement activities of the Fund, and (3) recommendations to the Congress for such additional legislative authority as may be necessary to improve the management of the Fund and the administration of the liability provisions of this title.

AUTHORIZATION OF APPROPRIATIONS

Sec. 321. (a) There is authorized to be appropriated for the administration of this title \$10,000,000 for the fiscal year ending September 30, 1977, \$5,000,000

for the fiscal year ending September 30, 1978, and \$5,000,000 for the fiscal year ending September 30, 1979.

(b) There are also authorized to be appropriated to the Fund from time to time such amounts as may be necessary to carry out the purposes of the applicable provisions of this title, including the entering into contracts pursuant to section 306(b)(4) of this title, any disbursements of funds pursuant to section 309(a) of this title, and the issuance of notes or other obligations pursuant to section 309(e) of this title.

(c) Notwithstanding any other provision of this title, the authority to make contracts pursuant to section 306(b)(4) of this title, to make disbursements pursuant to section 309(a) of this title, to issue notes or other obligations pursuant to section 309(e) of this title, and to charge and collect fees pursuant to section 310(a) of this title shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this title.

RELATIONSHIP TO OTHER LAW

SEC. 322. (a) Except as provided in section 311(f) of this title, this title shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil resulting in damages or cleanup costs within the jurisdiction of any State.

(b) Any person who receives compensation for damages or cleanup costs pursuant to this title shall be precluded from recovering compensation for the same damages or cleanup costs pursuant to any other State or Federal law. Any person who receives compensation for damages or cleanup costs pursuant to any other State or Federal law shall be precluded from receiving compensation for the same damages or cleanup costs under this title.

TITLE IV—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

Sec. 401. The Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), is amended as follows:

(1) Section 304 of such Act (16 U.S.C. 1453) is amended by adding at the end thereof the following new subsections:

“(j) ‘Outer Continental Shelf energy activity’ means exploration for, or the development or production of, oil and gas resources from the outer Continental Shelf, or the location, construction, expansion or operation of any energy facilities made necessary by such exploration or development.

“(k) ‘Energy facilities’ means new facilities, or additions to existing facilities—

“(1) which are or will be directly used in the extraction, conversion, storage, transfer, processing, or transporting of any energy resource; or

“(2) which are or will be used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are or will be directly involved in any activity described in paragraph (1) of this subsection and which will serve, impact, or otherwise affect a substantial geographical area or substantial numbers of people.

The term includes, but is not limited to (A) electric generating plants; (B) petroleum refineries and associated facilities; (C) gasification plants; liquefied natural gas storage, transfer, or conversion facilities; and uranium enrichment or nuclear fuel processing facilities; (D) outer Continental Shelf oil and gas exploration, development, and production facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, refining complexes, and any other installation or property that is necessary for such exploration, development, or production; (E) facilities for offshore loading and marine transfer of petroleum; (F) pipelines and transmission facilities; and (G) terminals which are associated with any of the foregoing.

“(l) ‘Public facilities and public services’ means any services or facilities which are financed, in whole or in part, by state or local government. Such services and facilities include, but are not limited to, highways, secondary roads, parking, mass transit, water supply, waste collection and treatment, schools and education, hospitals and health care, fire and police protection, recreation and culture, other human services, and facilities related thereto, and such govern-

mental services as are necessary to support any increase in population and development.

"(m) 'Local government' means any political subdivision of any coastal state if such subdivision has taxing authority or provides any public service which is financed in whole or part by taxes, and such term includes, but is not limited to, any school district, fire district, transportation authority, and any other special purpose district or authority.

"(n) 'Net adverse impacts' means the consequences of a coastal energy activity which are determined by the Secretary to be economically or ecologically costly to a state's coastal zone when weighed against the benefits of a coastal energy activity which directly offset such costly consequences according to the criteria as determined in accordance with section 308(c) of this title. Such impacts may include, but are not limited to—

"(1) rapid and significant population changes or economic development requiring expenditures for public facilities and public services which cannot be financed entirely through its usual and reasonable means of generating state and local revenues, or through availability of Federal funds including those authorized by this title;

"(2) unavoidable loss of unique or unusually valuable ecological or recreational resources when such loss cannot be replaced or restored through its usual and reasonable means of generating state and local revenues, or through availability of Federal funds including those authorized by this title.

"(o) 'Coastal energy activity' means any of the following activities if it is carried out in, or has a significant effect on, the coastal zone of any coastal state or coastal states—

"(1) the exploration, development, production, or transportation of oil and gas resources from the outer Continental Shelf and the location, construction, expansion, or operation of supporting equipment and facilities limited to exploratory rigs and vessels; production platforms; subsea completion systems; marine service and supply bases for rigs, drill ships, and supply vessels; pipelines, pipelaying vessels and pipeline terminals, tanks receiving oil or gas from the outer Continental Shelf for temporary storage; vessel loading docks and terminals used for the transportation of oil or gas from the outer Continental Shelf; and other facilities or equipment required for the removal of the foregoing or made necessary by the foregoing when such other facilities or equipment are determined by the coastal state affected to have technical requirements which would make their location, construction, expansion, or operation in the coastal zone unavoidable;

"(2) the location, construction, expansion, or operation of vessel loading docks, terminals, and storage facilities used for the transportation of liquefied natural gas, coal, or oil of conversion or treatment facilities necessarily associated with the processing of liquefied natural gas; or

"(3) the location, construction, expansion, or operation of deepwater ports and directly associated facilities, as defined in the Deepwater Port Act (33 U.S.C. 1501-1524)."

(2) Sections 308 through 315 of such Act (16 U.S.C. 1457 through 1464) are redesignated as sections 310 through 317, respectively.

(3) Such Act is amended by inserting immediately after section 307 the following new subsections:

"COASTAL ENERGY ACTIVITY IMPACT PROGRAM

"Sec. 308. (a) (1) The Secretary shall make a payment for each fiscal year to each coastal state in an amount which bears to the amount appropriated for that fiscal year pursuant to paragraph (6) of this subsection the same ratio as the number representing the average of the following proportions (computed with regard to such state) bears to 100—

"(A) the proportion which the outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal Government in that year bears to the total outer Continental Shelf acreage which is leased by the Federal Government in that year;

"(B) the proportion which the number of exploration and development wells adjacent to that state which are drilled in that year on outer Continental Shelf acreage leased by the Federal Government bears to the total number of exploration and development wells drilled in that year on outer Continental Shelf acreage leased by the Federal Government;

"(C) the proportion which the volume of oil and natural gas produced in that year from outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal Government bears to the total volume of oil and natural gas produced in that year from outer Continental Shelf lands under Federal lease in that year;

"(D) the proportion which the volume of oil and natural gas produced from outer Continental Shelf acreage leased by the Federal Government and first landed in such state in that year bears to the total volume of oil and natural gas produced from all outer Continental Shelf acreage leased by the Federal Government and first landed in the United States in that year;

"(E) the proportion which the number of individuals residing in such state in that year who are employed directly in outer Continental Shelf energy activities by outer Continental Shelf lessees and their contractors and subcontractors bears to the total number of individuals residing in all coastal states who are employed directly in outer Continental Shelf energy activities in that year by outer Continental Shelf lessees, and their contractors and subcontractors; and

"(F) the proportion which the onshore capital investment which is made during that year in such state and which is required to directly support outer Continental Shelf energy activities bears to the total of all such onshore capital investment made in all coastal states during that year.

"(2) For purposes of calculating the proportions set forth in paragraph (1) of this subsection, 'the outer Continental Shelf lands which are adjacent to such state' shall be the portion of the outer Continental Shelf lying on that state's side of extended seaward boundaries determined as follows: (A) In the absence of seaward lateral boundaries, or any portion thereof, clearly defined or fixed by interstate compacts, agreements, or judicial decree (if entered into, agreed to, or issued before the effective date of this paragraph), the boundaries shall be that portion of the outer Continental Shelf which would lie on that state's side of lateral marine boundaries as determined by the application of the principles of the Convention on the Territorial Sea and the Contiguous Zone. (B) If seaward lateral boundaries have been clearly defined or fixed by interstate compacts, agreements, or judicial decree (if entered into, agreed to, or issued before the effective date of this paragraph), such boundaries shall be extended on the basis of the principles of delimitation used to establish them.

"(3) The Secretary shall have the responsibility for the compilation, evaluation, and calculation of all relevant data required to determine the amount of the payments authorized by this subsection and shall, by regulations promulgated in accordance with section 553 of title 5, United States Code, set forth the method by which collection and evaluation of such data shall be made. In compiling and evaluating such data, the Secretary may require the assistance of any relevant Federal or State agency. In calculating the proportions set forth in paragraph (1) of this subsection, payments made for any fiscal year shall be based on data from the immediately preceding fiscal year, and data from the transitional quarter beginning July 1, 1976, and ending September 30, 1976, shall be included in the data from the fiscal year ending June 30, 1976.

"(4) Each coastal state receiving payments under this subsection shall use the moneys for the following purposes and in the following order of priority:

"(A) The retirement of state and local bonds, if any, which are guaranteed under section 309 of this title which were issued for projects or programs designed to provide revenues which are to be used to provide public services and public facilities which are made necessary by outer Continental Shelf energy activity; except that, if the amount of such payments is insufficient to retire both state and local bonds, priority shall be given to retiring local bonds.

"(B) The study of, planning for, development of, and the carrying out of projects or programs which are designed to provide new or additional public facilities or public services required as a direct result of outer Continental Shelf energy activity.

"(C) The reduction or amelioration of any unavoidable loss of unique or unusually valuable ecological or recreational resources resulting from outer Continental Shelf activity.

"(5) It shall be the responsibility of the Secretary to determine annually if such coastal state has expended or committed funds in accordance with the purposes authorized herein by utilizing procedures pursuant to section 312 of this title. The United States shall be entitled to recover from any coastal state that

portion of any payment received by such state under this subsection which—

“(A) is not expended by such state before the close of the fiscal year immediately following the fiscal year in which the payment was disbursed, or

“(B) is expended or committed by such state for any purposes other than a purpose set forth in paragraph (4) of this subsection.

“(6) For purposes of this subsection, there are hereby authorized to be appropriated funds not to exceed \$50,000,000 for the fiscal year ending September 30, 1977; \$50,000,000 for the fiscal year ending September 30, 1978; \$75,000,000 for the fiscal year ending September 30, 1979; \$100,000,000 for the fiscal year ending September 30, 1980; and \$125,000,000 for the fiscal year ending September 30, 1981.

“(7) It is the intent of Congress that each state receiving payments under this subsection shall, to the maximum extent practicable, allocate all or a portion of such payments to local governments thereof and that such allocation shall be on a basis which is proportional to the extent to which local governments require assistance for purposes as provided in paragraph (4) of this subsection. In addition, any coastal state may, for the purposes of carrying out the provisions of this subsection and with the approval of the Secretary, allocate all or a portion of any grant received under this subsection to (A) any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, (B) any regional agency, or (C) any interstate agency. No provision in this subsection shall relieve any state of the responsibility for insuring that any funds allocated to any local government or other agency shall be applied in furtherance of the purposes of this subsection.

“(b) (1) The Secretary may make grants to any coastal state if he determines that such state's coastal zone is being, or is likely to be, impacted by the location, construction, expansion, or operation of energy facilities in, or which significantly affect its coastal zone. Such grants shall be for the purpose of enabling such coastal state to study and plan for the economic, social, and environmental consequences which are resulting or are likely to result in its coastal zone from such energy facilities. The amount of any such grant may equal up to 80 per centum of the cost of such study or plan, to the extent of available funds.

“(2) The Secretary may make grants to any coastal state if he is satisfied, pursuant to regulations and criteria to be promulgated according to subsection (c) of this section, that such state's coastal zone has suffered, or will suffer, net adverse impacts from any coastal energy activity. Such grants shall be used for, and may equal up to 80 per centum of the cost of carrying out projects, programs, or other purposes which are designed to reduce or ameliorate any net adverse impacts resulting from coastal energy activity.

“(c) Within one hundred and eighty days after the effective date of this section, the Secretary shall, by regulations promulgated in accordance with section 553 of title 5, United States Code, establish requirements for grant eligibility under subsection (b) of this section. Such regulations shall—

“(1) include appropriate criteria for determining the amount of a grant and the general range of studying and planning activities for which grants will be provided under subsection (b) (1) of this section;

“(2) specify the means and criteria by which the Secretary shall determine whether a state's coastal zone has, or will suffer, net adverse impacts;

“(3) include criteria for calculating the amount of a grant under subsection (b) (2) of this section, which criteria shall include consideration of—

“(A) offsetting benefits to the state's coastal zone or a political subdivision thereof, including but not limited to, increased revenues;

“(B) the state's overall efforts to reduce or ameliorate net adverse impacts, including but not limited to, the state's effort to insure that persons whose coastal energy activity is directly responsible for net adverse impacts in the state's coastal zone are required, to the maximum extent practicable, to reduce or ameliorate such net adverse impacts;

“(C) the state's consideration of alternative sites for the coastal energy activity which would minimize net adverse impacts; and

“(D) the availability of Federal funds pursuant to other statutes, regulations, and programs, and under subsection (a) of this section, which may be used in whole or in part to reduce or ameliorate net adverse impacts of coastal energy activity;

In developing regulations under this section, the Secretary shall consult with the appropriate Federal agencies, which upon request, shall assist the Secretary in the formulation of the regulations under this subsection on a nonreimbursable

basis; with representatives of appropriate state and local governments; with commercial, industrial, and environmental organizations; with public and private groups; and with any other appropriate organizations and persons with knowledge or concerns regarding adverse impacts and benefits that may affect the coastal zone.

"(d) All funds appropriated to carry out the purposes of subsection (b) of this section shall be deposited in a fund which shall be known as the Coastal Energy Activity Impact Fund. The fund shall be administered and used by the Secretary as a revolving fund for carrying out such purposes. General expenses of administering this section may be charged to the fund. Moneys in the fund may be deposited in interest-bearing accounts or invested in bonds or other obligations which are guaranteed as to principal and interest to the United States.

"(e) There are hereby authorized to be appropriated to the Coastal Energy Activity Impact Fund such sums not to exceed \$125,000,000 for the fiscal year ending September 30, 1977, and for each of the next four succeeding fiscal years, as may be necessary, which shall remain available until expended.

"(f) It is the intent of Congress that each state receiving any grant under paragraph (1) or (2) of subsection (c) of this section shall, to the maximum extent practicable, allocate all or a portion of such grant to any local government thereof which has suffered or may suffer net adverse impacts resulting from coastal energy activities and such allocation shall be on a basis which is proportional to the extent of such net adverse impact. In addition, any coastal state may, for the purpose of carrying out the provisions of subsection (c) of this section, with the approval of the Secretary, allocate all or a portion of any grant received to (1) any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, (2) any regional agency, or (3) any interstate agency. No provision in subsection (b) of this section shall relieve a state of the responsibility for insuring that any funds so allocated to any local government or any other agency shall be applied in furtherance of the purposes of such subsection.

"(g) No coastal state is eligible to receive any payment under subsection (a) of this section, or any grant under subsection (b) of this section unless such state—

"(1) is receiving a program development grant under section 305 of this title, or is making satisfactory progress, as determined by the Secretary toward the development of a coastal zone management program, or has such a program approved pursuant to section 306 of this title; and

"(2) has demonstrated to the satisfaction of, and has provided adequate assurances to, the Secretary that the proceeds of any such payment or grant will be used in a manner consistent with the coastal zone management program being developed by it, or with its approved program, consistent with the goals and objectives of this title.

"STATE AND LOCAL GOVERNMENT BOND GUARANTEES

"Sec. 309. (a) The Secretary is authorized, in accordance with such rules as he shall prescribe, to make commitments to guarantee and to guarantee the payment of interest on and the principal balance of bonds or other evidences of indebtedness issued by a coastal state or unit of general purpose local government for the purposes specified in subsection (b) of this section.

"(b) A bond or other evidence of indebtedness may be guaranteed under this section only if it is issued by a coastal state or unit of general purpose local government for the purpose of obtaining revenues which are to be used to provide public services and public facilities which are made necessary by outer Continental Shelf energy activities.

"(c) Bonds or other evidences of indebtedness guaranteed under this section shall be guaranteed on such terms and conditions as the Secretary shall prescribe, except that—

"(1) no guarantee shall be made unless the Secretary determines that the issuer of the evidence of indebtedness would not be able to borrow sufficient revenues on reasonable terms and conditions without the guarantee;

"(2) the guarantees shall provide for complete amortization of the indebtedness within a period not to exceed thirty years;

"(3) the aggregate principal amount of the obligations which may be guaranteed under this section on behalf of a coastal state or a unit of gen-

eral purpose local government and outstanding at any one time may not exceed \$20,000,000;

"(4) the aggregate principal amount of all the obligations which may be guaranteed under this section and outstanding at any one time may not exceed \$200,000,000;

"(5) no guarantee shall be made unless the Secretary determines that the bonds or other evidences of indebtedness will—

"(A) be issued only to investors approved by, or meeting requirements prescribed by, the Secretary, or, if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary;

"(B) bear interest at a rate satisfactory to the Secretary;

"(C) contain or be subject to repayment, maturity, and other provisions satisfactory to the Secretary; and

"(D) contain or be subject to provisions with respect to the protection of the security interest of the United States;

"(6) the approval of the Secretary of the Treasury shall be required with respect to any guarantee made under this section, except that the Secretary of the Treasury may waive this requirement with respect to the issuing of any such obligation when he determines that such issuing does not have a significant impact on the market for Federal Government and Federal Government-guaranteed securities;

"(7) the Secretary determines that there is reasonable assurance that the issuer of the evidence of indebtedness will be able to make the payments of the principal of and interest on such evidence of indebtedness; and

"(8) no guarantee shall be made after September 30, 1981.

"(d) (1) Prior to the time when the first bond or other evidence of indebtedness is guaranteed under this section, the Secretary shall publish in the Federal Register a list of the proposed terms and conditions under which bonds and other evidences of indebtedness will be guaranteed under this section. For at least thirty days following such publication, the Secretary shall receive, and give consideration, to comments from the public concerning such terms and conditions. Following this period, the Secretary shall publish in the Federal Register a final list of the conditions under which bonds and other evidences of indebtedness will be guaranteed under this section. The initial guarantee made under this section may not be conducted until thirty days after the final list of terms and conditions is published.

"(2) Prior to making any amendment to such final list of terms and conditions, the Secretary shall publish such amendment in the Federal Register and receive, and give consideration to, comments from the public for at least thirty days following such publication. Following this period, the Secretary shall publish in the Federal Register the final form of the amendment, and such amendment shall not become effective until thirty days after this publication.

"(e) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section with respect to principal, interest, and any redemption premiums. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation.

"(f) The Secretary shall prescribe and collect a fee in connection with guarantees made under this section. This fee may not exceed the amount which the Secretary estimates to be necessary to cover the administrative costs of carrying out this section. Fees collected under this subsection shall be deposited in the revolving fund established under subsection (i).

"(g) With respect to any obligation guaranteed under this section, the interest payment paid on such obligation and received by the purchaser thereof (or his successor in interest) shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954.

"(h) (1) Payments required to be made as a result of any guarantee made under this section shall be made by the Secretary from funds which may be appropriated to the revolving fund established by subsection (i) or from funds obtained from the Secretary of the Treasury and deposited in such revolving fund pursuant to subsection (i) (2).

"(2) If there is a default by a coastal state or unit of general purpose local government in any payment of principal or interest due under a bond or other evidence of indebtedness guaranteed by the Secretary under this section, any

holder of such bond or other evidence of indebtedness may demand payment by the Secretary of the unpaid interest on and the unpaid principal of such obligation as they become due. The Secretary, after investigating the facts presented by the holder, shall pay to the holder the amount which is due him, unless the Secretary finds that there was no default by the coastal state or unit of general purpose local government or that such default has been remedied. If the Secretary makes a payment under this paragraph, the United States shall have a right of reimbursement against the coastal state or unit of general purpose local government for which the payment was made for the amount of such payment plus interest at the prevailing current rate as determined by the Secretary. If any revenue becomes due to such coastal state or unit of general purpose local government under section 308(a) of this title, the Secretary shall, in lieu of paying such coastal state or unit of general purpose local government such revenue, deposit such revenue in the revolving fund established under subsection (1) until the right of reimbursement has been satisfied.

"(3) The Attorney General shall, upon request of the Secretary, take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this section. Any sum recovered pursuant to this paragraph shall be paid into the revolving fund established by subsection (1).

"(i) (1) The Secretary shall establish a revolving fund to provide for the timely payment of any liability incurred as a result of guarantees made under this section, for the payment of costs of administering this section, and for the payment of obligations issued to the Secretary of the Treasury under paragraph (2) of this subsection. This revolving fund shall be comprised of—

- "(A) receipts from fees collected under this section;
- "(B) recoveries under security, subrogation, and other rights;
- "(C) reimbursements, interest income, and any other receipts obtained in connection with guarantees made under this section;
- "(D) proceeds of the obligations issued to the Secretary of the Treasury pursuant to paragraph (2) of this subsection; and
- "(E) such sums as may be appropriated to carry out the provisions of this section.

Funds in the revolving fund not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States or guaranteed thereby or in obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds.

"(2) The Secretary may, for the purpose of carrying out the functions of this section, issue obligations to the Secretary of the Treasury only to such extent or in such amounts as may be provided in appropriation Acts. The obligations issued under this paragraph shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury shall purchase any obligation so issued, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any security issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under that Act are extended to include purchases of the obligations hereunder. Proceeds obtained by the Secretary from the issuance of obligations under this paragraph shall be deposited in the revolving fund established in paragraph (1).

"(3) There are authorized to be appropriated to the revolving fund such sums as may be necessary to carry out the provisions of this section.

"(4) Funds may be obligated for purposes stated in subsection (1) only to the extent provided in appropriations Acts.

"(j) No bond or other evidence of indebtedness shall be guaranteed under this section unless the issuer of the evidence of indebtedness and the person holding the note with respect to such evidence of indebtedness permit the General Accounting Office to audit, under rules prescribed by the Comptroller General of the United States, all financial transactions of such issuer and holder which relate to such evidence of indebtedness. The representatives of the General Accounting Office shall have access to all books, accounts, reports, files, and other records of such issuer and such holder insofar as any such record pertains to financial transactions relating to the evidence of indebtedness guaranteed under this section.

"(k) For purposes of this section, the term 'unit of general purpose local government' shall mean any city, county, town, township, parish, village, or other general purpose political subdivision of a coastal state, if such general purpose

political subdivision possesses taxing powers and has responsibility for providing public facilities or public services to the community, as determined by the Secretary.

"(1) Notwithstanding any other provision of this section, the authority to make guarantees or commitments to guarantee under this section shall be effective only to the extent provided in appropriations Acts enacted after the date of enactment of this section."

TITLE V—MISCELLANEOUS PROVISIONS

REVIEW OF SHUT-IN OR FLARING WELLS

SEC. 501. (a) In a report submitted within six months after the date of enactment of this Act, and in his annual report thereafter, the Secretary shall list all shut-in oil and gas wells and wells flaring natural gas on leases issued under the Outer Continental Shelf Lands Act. Each such report shall be submitted to the Comptroller General and shall indicate why each well is shut-in or flaring natural gas, and whether the Secretary intends to require production on such a shut-in well or order cessation flaring.

(b) Within six months after receipt of the Secretary's report, the Comptroller General shall review and evaluate the methodology used by the Secretary in allowing the wells to be shut-in or to flare natural gas and submit his findings and recommendations to the Congress.

REVIEW AND REVISION OF ROYALTY PAYMENTS

SEC. 502. As soon as feasible and no later than ninety days after the date of enactment of this Act, and annually thereafter, the Secretary of the Interior shall submit a report or reports to the Congress describing the extent, during the two-year period preceding such report, of delinquent royalty accounts under leases issued under any Act which regulates the development of oil and gas on Federal lands, and what new auditing, post-auditing, and accounting procedures have been adopted to assure accurate and timely payment of royalties and net profit shares. Such report or reports shall include any recommendations for corrective action which the Secretary of the Interior determines to be appropriate.

NATURAL GAS DISTRIBUTION

SEC. 503. The Federal Power Commission shall, pursuant to its authority under section 7 of the Natural Gas Act, permit any natural gas distributing company which engages, directly or indirectly, in development and production of natural gas from the Outer Continental Shelf to transport to its service area for distribution any natural gas obtained by such natural gas distributing company from such development and production. For purposes of this section, the term "natural gas distributing company" means any person (1) engaged in the distribution of natural gas at retail, and (2) regulated or operated as a public utility by a State or local government.

RELATIONSHIP TO EXISTING LAW

SEC. 504. Except as otherwise expressly provided in this Act, nothing in this Act shall be construed to amend, modify, or repeal any provision of the Coastal Zone Management Act of 1972, the National Environmental Policy Act of 1969, the Mining and Mineral Policy Act of 1970, or any other Act.

Amend the title so as to read :

A BILL to establish a policy for the management of oil and natural gas in the Outer Continental Shelf, to protect the marine and coastal environment, to amend the Outer Continental Shelf Lands Act, and for other purposes.

I. SUMMARY OF KEY PROVISIONS OF H.R. 6218

A. *H.R. 6218 and the Secretary of the Interior*

H.R. 6218 vests new responsibility in the Secretary of the Interior, designed to provide for rational management of the oil and gas re-

sources of the Outer Continental Shelf. National energy requirements, affected states' needs, environmental protection, alternate uses of the coastal waters and lands, and economic reality, are all to be taken into account.

The Secretary must first develop a comprehensive leasing program. In accordance with a new Section 18 of the OCS Lands Act, the Secretary has nine months in which to prepare the leasing program, indicating size, timing and location of leasing activities for the next five years. He must review the program annually and update it as necessary. The timing and location of the leasing are to be based on a balance of an assessment of environmental damage, discovery potential, and impact on the coastal zone.

The Secretary must submit this plan to the Attorney General, who shall submit comments on the effects of such a program on competition; and to any Regional Advisory Board, states, local governments, and other persons, who may submit comments or recommendations with regard to any aspect of the program. The plan is then transmitted to the Congress, with all comments. All specific recommendations received must be accepted by the Secretary, unless he indicates specifically why they are not being accepted. Once a leasing program has been approved, all leasing is to be in accordance with that program.

The Secretary of the Interior can then, in accordance with the program, award leases to various bidders. At present, the cash bonus system is used almost exclusively. Under that system, in order to win a lease, a company must have vast amounts of capital, and the price to the company is set without full knowledge of the value of the oil and gas in the area. This may reduce competition for offshore leases to the major oil companies and reduce the public return for resources. To increase competition for offshore leases and secure higher returns to the public Treasury, Section 8 of the Outer Continental Shelf Lands Act has been amended to allow the Secretary to use seven other bidding methods based on net profits; royalty; or percentages of a lease area (Phillips Plan). The Secretary is required to choose the new bidding systems in at least ten percent of all lease sales in frontier areas during the next five years. If, however, the Secretary finds that he must use the present system for more than ninety percent of the lease sales in order to promote efficient development or competition, he must submit a report to the Congress, and both Houses must pass a resolution of approval within thirty days before he may exceed that limitation.

Other provisions prohibit joint bids among major producers; allow leases to be for geological structures or traps, or for a reasonable production unit; and limit leases to five years unless there is a discovery or are specific circumstances to justify a five-year extension. In order to ensure competition, no lease may be issued or extended until the Attorney General and the Federal Trade Commission have been notified of the issuance or extension.

To manage activities on a lease, the Secretary of the Interior is to issue regulations to enforce the Act. Section 204 of the bill amends Section 5 of the Act to mandate provisions for the issuance of regulations dealing with the temporary suspension of activities on a lease, as well as for the cancellation of a lease if it is determined that continued activity would cause serious harm or damage, which would not decrease

over a reasonable period of time. Cancellation or termination is also permitted, and sometimes required, for failure to comply with law, lease terms, or applicable regulations.

To allow oversight by the Congress, the Secretary of the Interior is to file an annual report to the Congress within six months after the end of each fiscal year on the OCS leasing and production program. Section 207 of the bill amends Section 15 of the Act to require this annual report to include a detailed accounting of all monies; a detailed accounting of all activities; a summary of management, supervision, and enforcement activities; a list of all shut-in and flaring wells; and recommendations to the Congress for improvements in management, safety, amount of production, and resolution of jurisdictional disputes.

In addition, the Secretary is to submit a report, after consultation with the Attorney General, with recommendations for promoting competition, and containing an evaluation of the various bidding systems; why a particular bidding system has not been utilized; an evaluation of alternative bidding systems not authorized by the Act; an evaluation of joint bidding restrictions in promoting competition; and an evaluation of any measures to increase the supply of oil and gas to independent refiners and distributors.

B. H.R. 6218 and the Energy Industry

Lessees will face more and stricter regulations as a result of this legislation, but will also enjoy greater certainty about the political environment in which they are operating.

Private energy companies will continue to be the major explorers for oil and gas, and the developers and producers of these resources.

Section 206 amends Section 11 of the OCS Lands Act, but includes the original language of Section 11, which allowed geological and geophysical explorations to be conducted by any agency of the United States or any person authorized by the Secretary.

This language, which has been part of the law for twenty-three years, means that the federal government can, as now, allow exploration pursuant to a lease, permit, or regulation, conduct exploration itself, or contract out for exploration to be done by private industry prior to a lease sale. New language has been added that would require the Secretary, at least once in every frontier area, to seek qualified applicants to conduct on-structure stratigraphic drilling, prior to a lease sale.

A company which has obtained a lease must submit an exploration plan for approval by the Secretary before it may proceed with its exploration activities. The exploration plan is to include a schedule of activities, a description of the equipment to be used, the general location of each well to be drilled, and other information as required by the Secretary. The Secretary must review the plan to see if it is in accordance with the law, regulations prescribed under the Act, and the provisions of the lease. The Secretary has thirty days to approve or modify such a plan, but may delay approval if he believes a suspension of activities on the lease is warranted.

A company which has obtained a lease must also submit a development and production plan in accordance with a new Section 25 of the OCS Act, prior to beginning development and production of the oil

and gas covered in the lease. This plan must describe the specific work to be performed, all offshore facilities and operations proposed by the lessee or known by him, environmental and safety protections, the rate of development and production, a time schedule for performance, and other relevant information. In addition, a lessee is to prepare a statement describing all facilities and operations, other than on the Outer Continental Shelf, proposed and known by him which will be constructed or utilized in development and production of oil and gas from a lease area, including the location and site of such facilities, the land, labor, material and energy requirements, and all environmental and safety protections.

The plan then goes through a review procedure by the Governors, a Regional Board, and any other interested party. This review process may take up to seven months. The Secretary must finally approve, disapprove, or require modifications of the plan.

C. H.R. 6218 and the States

A major purpose of H.R. 6218 is to involve the States in the entire exploitation process to a greater degree. The bill provides an opportunity for them to participate in the decision-making process with regard to the overall leasing program of the Secretary, and individual development and production plans of the oil companies. The States are also supplied with information so that they will be able to plan for and ameliorate the onshore consequences of offshore development, and with assistance in coping with the onshore impacts of such development. Involving states in the process from the beginning should avoid time-consuming lawsuits later.

A new section 18 of the OCS Act requires a five-year leasing program, that must be submitted to the States and local governments for review.

A new section 19 allows Regional OCS Advisory Boards to be established to work with Federal agencies to advise on OCS activities. Any recommendations by a Regional Advisory Board, or a Governor of an affected State, with regard to a proposed lease sale or a proposed development and production plan, must be submitted within sixty days and must be accepted by the Secretary unless he determines that they are not consistent with national security or the overriding national interest. In addition, under the new section 25, modifications of development and production plans must be, to the extent possible, consistent with State coastal zone management programs, and valid exercises of authority by any State or any political subdivision.

A new section 26 details an Outer Continental Shelf Oil and Gas Information Program. All lessees and permittees must provide access to the Secretary to all data obtained from their offshore activities, and must provide copies of any specific data and interpretation as the Secretary may require. After the Secretary has obtained, processed, analyzed and interpreted this data, he shall make available to affected States a summary of data to assist them in planning for onshore impacts. That summary shall include estimates of reserves, size and timing of development if any, location of pipelines, and location and nature of onshore facilities. In addition, he is to allow access by a state Governor's representative to all information, including proprie-

tary data, after a lease sale. The Secretary is to prescribe regulations for confidentiality.

Title IV of the bill creates an Energy Activity Impact Program, readopting H.R. 3981, the Coastal Zone Management Act Amendments of 1976. This program provides automatic and impact-demonstrated grants to states affected by OCS development. Grants that are automatic are based on a formula calculating impact on the state. These funds are to be used for the retirement of bonds, the study of, planning and development for, and carrying out of public projects to provide new or additional public facilities, and the reduction or amelioration of any unavoidable damage to unique or unusual ecological or recreational resources. Fifty million dollars is provided for each of fiscal years 1977 and 1978, and that amount increases to \$75 million for 1979, \$100 million for 1980, and \$125 million for 1981.

In addition to these automatic grants, \$125 million is authorized to be granted by the Secretary of Commerce for net adverse impacts resulting from the siting of coastal dependent energy facilities in the coastal zone for the next five years.

One final provision which affects some states deals with the leasing of tracts within three miles of the seaward boundary of any coastal state. Section 205 of the bill, which amends section 8 of the Act, states that prior to the leasing of any lands within three miles of the seaward boundary of any coastal state, the Secretary is to provide relevant information to the Governor of the affected state and to offer the Governor the opportunity to jointly lease any such area which might contain a geological structure or trap common to both state and federal lands. If the Governor accepts, the area is to be jointly leased. If the Governor refuses, the Secretary may go ahead and lease the area. In either event, all bonuses, royalties, rents and other revenues are to be placed in an escrow fund until geological information allows the Secretary and the Governor of the affected coastal state to determine the proper allocation of payments.

D. H.R. 6218 and the Environment

There are many provisions in H.R. 6218 for the protection of the marine, coastal, and human environment.

A new section 20 places responsibility for conducting studies to obtain baseline information and then to monitor areas in the National Oceanic and Atmospheric Administration ("NOAA") in the Department of Commerce. NOAA must prepare a study on any area or region included in a lease sale. These studies are to be concluded prior to final approval of any development and production plan, and are to attempt to predict impacts on the marine biota from OCS activities, and possible spills.

Section 25 of the Act provides for a review of activities after exploration and prior to development and production. An environmental impact statement ("EIS") and a hearing is mandated in previously undeveloped regions to occur at least once in every major lease area prior to approval of development and production. Through an EIS procedure, or a set period for comments and recommendations, where no such process is involved, Section 25 insures input from Governors, Regional Advisory Boards and other persons into the decision on whether to approve a development and production plan. If the plan

cannot be made to insure a safe operation because of exceptional circumstances, then the plan is to be disapproved by the Secretary, and the lease shall be considered cancelled. The lessee is entitled in such a case to reimbursement for all considerations paid for the lease, plus interest, and all direct expenditures made after the date of issuance of the lease.

E. H.R. 6218 and the Worker

The new section 21 of the Act provides for new safety and environmental regulations to be promulgated within one year of enactment of the 1976 Act. Regulations should require on all *new* drilling and production operations, and when practicable, on *existing* operations, the best available and safest technology economically achievable.

Section 21 further provides for a study to be conducted by the National Academy of Engineering of existing safety regulations. Finally, the Secretary of Labor is to issue interim regulations related to diving and other hazardous activities in or on the waters above the Outer Continental Shelf.

The new section 22 of the Act provides for enforcement of these safety and environmental regulations. Regular and unannounced inspections are mandated, as well as investigations of death, serious injuries, major fires, and oil spills.

F. H.R. 6218 and the Citizen

Through the new section 23, citizen suits are authorized by anyone having an interest that can be adversely affected against the relevant government agency or department, or against any other person, for a violation of the Act, implementing regulations, or terms of a lease or permit.

Remedies and penalties for violations of the Act, lease terms, or applicable regulations, are set out in the new section 24 of the Act.

Title III of the Act establishes an Offshore Oil and Pollution Fund and provides for procedures in the event of an oil spill and compensation for damages resulting from such an oil spill. The provisions of this title apply to spills from any offshore facility in the OCS, and any transportation device, including vessels, for the oil and gas from the offshore facility.

Procedures are established for the clean-up of spills, and the lessee or operator of the vessel is to be strictly liable for all clean-up costs. With limited exceptions, the lessee or operator is also strictly liable for all damages resulting from a spill up to \$35 million and the new fund liable for damages beyond that amount.

II. PURPOSES OF THE LEGISLATION

H.R. 6218 will amend the Outer Continental Shelf Lands Act of 1953 to provide a new statutory regime for the management of the oil and natural gas resources of the Outer Continental Shelf.

The United States is becoming increasingly dependent on foreign sources of oil. This dependence must be reduced. When the Select Committee began its work a year ago, the United States was importing approximately 35 percent of the oil it consumed. Since then the level of our imports has steadily risen, and the Nation is now obtaining more than 40 percent of its oil from foreign sources. Because of

this level of imports, the Nation's economy remains vulnerable to another oil embargo, which would cause severe internal dislocations. Our payments for foreign oil constitute a continuing threat to the maintenance of a favorable international balance of payments. Finally, reliance on foreign oil may also risk our ultimate national security. The basic purpose of H.R. 6218 is to promote the swift, orderly and efficient exploitation of our almost untapped domestic oil and gas resources in the Outer Continental Shelf.

Development of our OCS resources will supply needed time—as much as a generation—within which to develop alternative sources of energy before the inevitable exhaustion of the world's supply of fossil fuels.

The OCS Lands Act of 1953 has never been amended and is outmoded. No legislation presently exists for responsibility and liability for the effects of oil pollution resulting from activities on the Shelf. There is no statute providing for consultation with, and funds for, states which can be adversely affected by activities on the Shelf. The purpose of H.R. 6218, by establishing new management and regulatory requirements, by mandating coordination with affected states, and by providing compensation for spills and adverse impacts, is to cure these defects.

The lands of the Outer Continental Shelf that extend beyond three miles from our coastline belong to the federal government, and it has historically leased these lands to private industry for the exploration and development of the energy resources that lie beneath them. The leases have been awarded by auction, traditionally on the basis of cash bonus bids. With the present shortage of investment capital that will prevail for many years, increasing risks of uncertainty, and the increasing integration and concentration of energy industries, there is now doubt whether cash bonus bidding remains the best system for the future. One purpose of H.R. 6218 is to authorize alternative leasing arrangements and require experimentation with them. It is the view of the Select Committee that these new arrangements will enable the Secretary of the Interior, who administers the federal leasing program, to strike a proper balance between securing a fair return to the federal government for the lease of its lands, increasing competition in exploitation of resources, and providing the incentive of a fair profit to the oil companies, which must risk their investment capital.

Federal administration of the leasing program and federal regulation of offshore oil and gas development have been essentially a closed process involving the Secretary of the Interior and the oil industry. While the Secretary has on occasion sought or heard outside views, he has done so by rules established in his own discretion. Decision-making for the development of offshore oil and gas must be opened so that the coastal and other states affected by offshore oil and gas activities may participate in the process on a regular basis and so that affected local communities and the public at large may have an opportunity to be heard. Another purpose of H.R. 6218 is to provide statutory mechanisms that will open the decision-making process to a wide variety of views.

Regulations affecting the safety of the environment, of employees, and of marine life, have been the responsibility of the Coast Guard and the Department of the Interior since the OCS Lands Act of

1953. Information has often been insufficient as to whether this responsibility is being adequately handled. Some activities remain unregulated. Others are underregulated. Compensation for spills has been inadequate. With the leasing of areas in risky frontier areas, modern statutory guidelines are essential. H.R. 6218 provides for studies, reports, and a new set of safety regulations to be prepared, in a coordinated manner, by the federal agencies with the most expertise. H.R. 6218 provides for periodic review mechanisms to balance environmental and other safety risks against the benefits and dangers of activities. H.R. 6218 establishes liability requirements and compensation for oil spills.

Finally, development of offshore oil and gas will have a severe impact on the states, particularly in the first years of production. Offshore oil and gas will have to be brought to shore, processed, stored, and transported. The states will need federal assistance so that they can take proper steps to minimize the adverse environmental impact of the onshore handling of offshore oil and gas. They will also need federal assistance so that they can provide a proper infrastructure—new housing, schools, roads, and expanded municipal services—in areas that are suddenly impacted. H.R. 6218 authorizes an impact fund as a statutory vehicle for providing these necessary forms of assistance.

III. BACKGROUND ¹

Issues emerge on the American political agenda for a variety of reasons. Frequently, as in the case of Outer Continental Shelf oil and gas development, they arise for public consideration from a combination of pressures from outside the national political system, from scientific and technological advances, from efforts to protect vested interests, from changing levels and types of political consciousness, from new demands on scarce resources, from catastrophic events, and from even pure chance.

A brief look at the history of the OCS question will reveal that these factors, plus many others, have converged to bring this issue to the attention of the United States Congress.

The Truman Proclamation and early Federal-State Conflict

On September 28, 1945, President Harry S. Truman issued a Proclamation on the Continental Shelf ² stating that the Government of the United States "regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas contiguous to the coasts of the United States and appertaining to the United States, subject to its jurisdiction and control." Although not so stated in the proclamation, the continental shelf was considered to be that area contiguous to the Continent covered by no more than 100 fathoms (600 feet; 200 meters) of water. The Truman Proclamation and the claim of the United States was subsequently recognized by the Geneva Convention on the Continental Shelf.³

However, the period between the middle 1940's and the early 1950's was one in which a number of jurisdictional problems arose between

¹ For a more detailed discussion of the issues covered in this section, see "Effects of Offshore Oil and Natural Gas Development on the Coastal Zone", a study prepared pursuant to the request of Honorable John M. Murphy, Chairman, for the use of the Ad Hoc Select Committee on Outer Continental Shelf by the Library of Congress, Congressional Research Service (Washington, D.C.: U.S. Government Printing Office, 1976), 396 pp.

² Executive Order 9833, *Federal Register* 12304 (1945); 59 Stat. 885.

³ 3 U.N. Doc. A/Conf. 13/L.55, T.I.A.S. 5578.

the U.S. Federal Government and certain State Governments. In 1947 the Supreme Court, rejecting prior rulings in this area, held that the Federal Government had "paramount rights" over the area three miles seaward from the normal low water mark on the California coast.⁴ Similar decisions were made in Louisiana and Texas cases in 1950.⁵ In effect, then, the Court had decided that these states had no title to, or property interest in, the submerged lands off of their respective coasts outside their inland waters.

Congressional Action, 1953

To resolve these jurisdictional issues statutorily, Congress passed two acts in 1953 which helped to clarify the distinction in Federal-State control. The *Submerged Lands Act of 1953*⁶ gives the coastal states exclusive rights to the resources up to three geographical miles from the coast. Subsequent court cases provided that, for historic reasons, the boundaries of Texas and Florida extended for three marine leagues (approximately 10½ miles) from their coast lines into the Gulf of Mexico. The Act also reaffirmed the jurisdiction, power, and control of the United States beyond that point.

Although the *Submerged Lands Act* established coastal and seaward boundaries for Federal and State governmental jurisdiction, it was silent on the matter of Federal leasing for Outer Continental Shelf oil and gas resources. To remedy this situation, Congress also passed the *Outer Continental Shelf Lands Act of 1953* (OCSLA).⁷

This legislation defines the OCS as all lands lying seaward and outside of state waters (three miles) "and of which the subsoil and seabed (belong) to the United States and are subject to its jurisdiction and control." It also establishes very general guidelines and directives for the Secretary of the Interior in managing the resources of the OCS and in leasing tracts for oil and gas exploration and development.

Given the complexity of the OCS oil and gas issue and its implications for both the Federal and State Governments, the OCSLA is an all too general piece of legislation containing few mandates for the Secretary of the Interior in carrying out his important responsibilities in leasing OCS oil and gas resources. Much of the recent criticism leveled at the Act is based on its lack of specificity.

In its administration of the OCS oil and gas program, the Department of Interior fills in some details through its authority to promulgate rules and regulations which are published in the *Federal Register*.⁸ Lacking in the permanency or visibility of positive law and indicating a piecemeal approach to modernization, revision, and modification, much criticism has been directed toward the Department's OCS rule-making which is often considered the result of the lack of specific directives in the OCSLA.

Legislative History Since 1953

There has been only one limited amendment to the Outer Continental Shelf Lands Act since 1953.⁹ However, a number of statutes have been

⁴ *United States v. California*, 332 U.S. 19 (1947).

⁵ *United States v. Louisiana*, 339 U.S. 699 (1950); *United States v. Texas*, 339 U.S. 707 (1950).

⁶ P.L. 31, 93d Cong., 1st Session, 67 Stat. 29, 43 U.S.C. 1301 *et seq.*

⁷ P.L. 212, 93d Cong., 1st Session, 67 Stat. 462, 43 U.S.C. 1331 *et seq.*

⁸ See generally, 30 CFR 250.1 *et seq.*; 43 CFR 2853.0 *et seq.*, and 3300.0 *et seq.*

⁹ The Deepwater Port Act, January 3, 1975, P.L. 93-627, § 19(f), 88 Stat. 2146, required the state laws applicable to OCS activities to be continually updated. See 43 U.S.C. 1333, as amended (1975 Supp.).

passed that have application to OCS areas and operations. Specifically, the—

*Fish and Wildlife Act of 1956.*¹⁰—Establishes the United States Fish and Wildlife Service to study, protect and manage the fish resources under U.S. jurisdiction.

*Geneva Conventions of 1958.*¹¹—Provides for a territorial sea of three miles, a contiguous zone up to 12 miles, and a continental shelf “to a depth of 200 meters or . . . to where the depth . . . admits to exploration . . .”

*National Gas Pipeline Safety Act of 1968.*¹²—Establishes requirements for the placing of pipelines.

*National Environmental Policy Act of 1969.*¹³—Provides requirements through regulations for draft environmental impact statements, hearings, and final environmental impact statements as to areas of leasing and actual leases.

*Occupational Safety and Health Act of 1970.*¹⁴—Requires employers, including those engaged in OCS development activities, to provide a safe working environment for all employees.

*Federal Water Pollution Control Amendments of 1972.*¹⁵—Limits and controls the discharge of oil or hazardous substances into or upon the navigable waters.

*Marine Protection, Research and Sanctuaries Act of 1972.*¹⁶—Authorizes the designation of marine sanctuaries which may extend to the outer limit of the continental shelf.

*Coastal Zone Management Act of 1972.*¹⁷—Provides federal assistance to coastal states to enable them to develop and administer their own coastal management programs.

*Deepwater Port Act of 1974.*¹⁸—Provides for the regulation of the location, ownership, construction, and operation of deepwater ports beyond the territorial limits of the United States.

The Federal Function

The administration of the oil and gas resources on the OCS is primarily conducted, pursuant to the *Outer Continental Shelf Lands Act*, by the Department of the Interior. However, from the authorities granted by the legislation cited above and other statutes, a number of Federal agencies have responsibilities in OCS resource development.

Department of the Interior.—The Secretary is authorized to grant oil and gas leases on OCS tracts not exceeding 5,760 acres (three miles by three miles) for a period of five years and for as long thereafter as further activity is approved or production occurs. The Department is advised by the OCS Environmental Studies Advisory Committee, the OCS Advisory Board, and the National Petroleum Council.

Within the Department of the Interior, the Bureau of Land Management (BLM) administers the leasing provisions of the OCSLA.

¹⁰ Act of August 8, 1956, 70 Stat. 1119, as amended, 16 U.S.C. 742(a) *et seq.*

¹¹ Convention with Territorial Sea and the Contiguous Zone, U.N. Doc. A/Conf. 13/L.52, T.I.A.S. 5639; Convention on the Continental Shelf, U.N. Doc. A/Conf. 13/L.53, T.I.A.S. 5576.

¹² P.L. 90-481, 82 Stat. 720, 49 U.S.C. 1071 *et seq.*

¹³ P.L. 91-190, 83 Stat. 854, 42 U.S.C. 4321 *et seq.*

¹⁴ P.L. 91-596, 84 Stat. 1590, 29 U.S.C. 651 *et seq.*

¹⁵ P.L. 92-500, 86 Stat. 816, 33 U.S.C. 1251 *et seq.*

¹⁶ P.L. 92-522, 86 Stat. 1028-1046, 16 U.S.C. 1361, 1362, 1371-84, 1401-7.

¹⁷ P.L. 89-545, as added P.L. 92-583, 86 Stat. 1261, 16 U.S.C. 1451 *et seq.*

¹⁸ P.L. 93-627, 88 Stat. 2146, 33 U.S.C. 1501 *et seq.*

BLM, (a) receives nominations and selects tracts to be included in a lease sale; (b) prepares an environmental impact statement for each sale; (c) makes an economic, engineering and geological evaluation of tracts to be sold; (d) receives the bids and determines whether leases should be awarded to the highest bidders on individual tracts; (e) receives revenues from lease sales; and (f) grants rights of way for pipelines to transport oil and gas from OCS leases to shore.

The U.S. Geological Survey (USGS) has the primary responsibility within the Department for overseeing the development of a tract once it has been leased. USGS, (a) through its area supervisors and in consultation with the petroleum industry, issues detailed regulations in the form of OCS orders and notices covering operational safety; (b) enforces OCS orders and notices; (c) issues geophysical and geological exploration permits; (d) approves post-lease exploration and development plans, including the issuing of permits for both exploratory and development drilling; (e) approves pipelines as part of field development; and (f) collects royalties (which are deposited in the general treasury).

Finally, the U.S. Fish and Wildlife Service in Interior has a broad mandate to study, protect, and manage fish and wildlife resources and promote maximum use and enjoyment of wildlife resources compatible with their perpetuity.

Department of Commerce.—The National Oceanic and Atmospheric Administration (NOAA), within the Commerce Department, has several relevant OCS-related responsibilities.

The Coastal Zone Management Act of 1972 authorizes the Secretary of Commerce to provide grants-in-aid to coastal states to encourage the establishment of management programs for uses of land and water in coastal areas, and to require consistency of federal programs with approved state plans.

The Marine Protection, Research and Sanctuaries Act of 1972 authorizes the Secretary of Commerce, after consultation with the heads of other interested agencies and the approval of the President, to designate areas extending seaward as far as the outer edges of the OCS as marine sanctuaries for preservation or restoration for their conservation, recreational, ecological or esthetic values.

The National Marine Fisheries Service is concerned with all potential impacts on living marine resources and reviews draft and final environmental impact statements. Its responsibilities for commercial fisheries necessitates a deep interest in the impact of OCS operations.

The National Ocean Survey studies tides, currents and other environmental features which affect location and design of offshore structures. Its geodetic work and navigation charts also have application to OCS operations.

The Environmental Protection Agency.—EPA's role in OCS activities involve its being the lead agency in all National Environmental Protection Act studies and reviews and in having the authority to set and enforce discharge levels of pollutants. EPA's air pollution controls could have a major impact on onshore facilities such as refineries.

The Department of Transportation.—The Coast Guard, located within the Department of Transportation, has several OCS responsibilities including, (a) insuring that structures on the OCS are properly marked to protect navigation; (b) establishing and enforcing safety regulations for OCS structures; (c) inspecting and identifying floating drilling rigs; (d) maintaining surveillance for oil spilled or discharged into the waters over or immediately adjacent to the OCS; and (e) coordinating the National Oil and Hazardous Substance Pollution Contingency Plan.

The Office of Pipeline Safety, in the Transportation Department, has responsibility for the safety of pipelines, including establishing design criteria.

The Department of Defense.—The OCSLA and the 1899 Rivers and Harbors Act charge the Secretary of the Army with responsibility for preventing obstructions to navigation. The Corps of Engineers requires that a permit be obtained before an oil or gas structure may be placed on the OCS.

The Department of Labor and the Department of Health, Education, and Welfare.—Both departments have responsibilities under the Occupational Safety and Health Act of 1970. HEW makes evaluations of working conditions and provides technical assistance to employers. The Labor Department is responsible for establishing and enforcing interim and some final rules established to provide employees with a safe working environment.

Federal Power Commission.—The FPC has jurisdiction over common carrier pipelines. It has broad discretionary powers over the approval, design, and economics of common carrier gas pipelines, and it sets the wellhead price of OCS gas. It also issues certificates of public convenience and necessity required for gas pipeline construction.

The Federal Maritime Commission.—The Federal Water Pollution Control Act Amendments of 1972 requires the Federal Maritime Commission to determine the financial responsibility of oil shippers operating in the oceans adjacent to the U.S. Although most oil produced on the OCS is brought ashore by pipeline, this provision would apply to oil or gas brought ashore by barge or tanker.

The Federal Energy Administration.—FEA has been given the directive to insure that the supply of energy will be sufficient to meet demands. In energy shortages, FEA will establish priority needs. Among its functions is the development of a strategy for self-sufficiency in energy supplies. Its Office of Energy Resource Development is responsible for energy facility siting, construction and licensing.

Steps Involved In the OCS Leasing Process

The time required to reach initial production and peak production of OCS oil and gas is dependent on a number of factors. The USGS has estimated that the total time required after a lease sale to achieve initial production would be in the range of 4 to 11 years and to attain peak production would be in the range of 7 to 14 years.

The stages leading up to an OCS lease sale, as outlined by the USGS, are as follows:

STEPS

1. *Request for Tract Nomination.*—By way of publication in the Federal Register, industry, the States, and the general public are asked to designate tracts in a broad offshore region they think should or should not be offered for lease.

2. *Selection of General Areas for Inclusion in a Lease Schedule.*—Information received in tract nominations is used to make a tentative selection of tracts to be considered in a proposed lease sale. Before making these selections, information is provided to adjacent states as to relative interest expressed in the area proposed for sale.

3. *Draft Environmental Impact Statement.*—A draft statement is prepared that includes much information as a description of the lease proposal, a description of the offshore and nearby onshore environment, a detailed tract-by-tract analysis on possible adverse impacts, mitigating measures, alternative proposals, technology necessary for exploration, development, and production from the proposed sale, as well as possible onshore socio-economic impacts.

4. *Public Hearings.*—No earlier than 30 days after publication of the draft environmental statement, a public hearing is held in the vicinity of the proposed sale. Notice of the hearings is published in the Federal Register, and a news release is issued. Environmental organizations the academic community, government representatives, industry, and the general public are invited to testify orally or in writing.

TIME INVOLVED

Request is published about 15 months prior to target date for any proposed OCS lease sale. Time given for tract nominations is about 60 to 90 days.

Selection of tentative tracts and notification takes about 60 to 90 days. Factors underlying selection include initial assessments of oil and gas potential, environmental resources that might be affected, availability of technology, proximity to markers, etc.

Preparation of the draft environmental statement takes about 3 to 5 months. When ready, it is made available for public review; a notice of availability is published in the Federal Register and a news release is issued accordingly.

The public hearings are held usually, over a 2 to 4 day period. A period of at least 45 days is then provided during which all comments can be received and studied.

5. *Final Statement.*—A final environmental impact statement is prepared. This document provides a basis for deciding whether or not to hold a sale, to delete particular tracts, or to place restrictions on specific tracts. The final statement is made available to the public, with notice of availability published in the Federal Register and disseminated by news release.

6. *Decision by the Secretary.*—The Secretary of the Interior decides whether the proposed sale will be held, based on all pertinent information available. If the decision is that a sale will be held, determinations are made concerning which tracts will be offered, and what the lease terms will be.

7. *Notice of Sale.*—If a decision is made to hold a sale, a notice is published in the Federal Register stating the date, place and time that bids are to be opened, the tracts to be included in the sale, the terms under which the sale will be held, and any special stipulations that may be imposed on particular tracts.

8. *Lease Sale.* — Typically, leases are sold on the basis of a cash bonus with a one-sixth fixed royalty. The sale is publicly opened with a reading of all sealed bids. After the public reading, the bids are checked for technical and legal adequacy, and sufficient bonus, 20 percent of which must accompany the bid. The Federal government reserves the right to reject any or all bids. Acceptance or rejection of bids is not made until after the post-sale evaluation.

Preparation of the final environmental statement may take from 2 to 4 months. During the preparation and review of the environmental statements, geologists, geophysicists, and engineers prepare detailed estimates of the value of each tract being considered for sale.

The Secretary of the Interior makes his decision no earlier than 30 days after the submission of the final environmental statement to the Council on Environmental Quality.

The notice of sale is published at least 30 days advance notice concerning all the particulars.

A period of no more than 30 days is involved between the lease sale and an issuance of a lease to a successful bidder.

D. Oil and Gas Lease Contract.—An oil and gas mineral lease grants the right to the lessee to conduct necessary operations to search for, discover, and produce petroleum from OCS submerged lands in accordance with environmental and safety regulations. The Federal government reserves such rights as: leasing of other minerals, rights-of-way, the right to take royalty in the amount or value of production, and the right to extract helium from all gas produced.

An oil and gas lease covers a compact area not exceeding 5,760 acres, and the primary term is 5 years, continuing thereafter as long as oil and gas may be produced in paying quantities or approved workover operations are conducted.

IV. ^{*}RECENT OCS DEVELOPMENTS IN THE UNITED STATES

The United States Outer Continental Shelf

The total area of the Outer Continental Shelf is approximately one-third the size of the United States. However, only a small fraction (12 million acres) has been leased for oil and gas development. Practically all of the federal OCS lease tracts which have been sold since 1954 are in the Gulf of Mexico, off the coasts of Louisiana and Texas. One hundred and eighty-five tracts (988,170 acres) have been leased off Southern California, particularly in the Santa Barbara Channel area.

With the exception of certain portions of the Gulf of Mexico shelf off the shores of Louisiana, Texas, Mississippi, Alabama, and Florida, three other segments of the U.S. outer continental shelf comprise so-called "frontier" areas where no previous federal oil and gas leasing had occurred.

These areas are: the Alaskan continental shelf, consisting of the Gulf of Alaska, the Bering Sea, the Chukchi Sea, the Beauford Sea, and Prudhoe Bay; the Southern California basins, as well as offshore Oregon and Washington; and the Atlantic shelf, including the Georges Bank off New England the Baltimore Canyon Trough (off New Jersey, Delaware and Maryland), the Southeast Georgia Embayment from South Carolina to Florida, and the Blake Plateau off northern Florida and Georgia.

Oil and Gas Potential on the OCS

The precise amount of oil and gas which is recoverable from the U.S. continental shelf is unknown. Some sources of hydrocarbons, recoverable from known reservoirs under present economic and operating conditions, are called "demonstrated reserves". With sound geologic and engineering knowledge, predictability about the existence and amount of these reserves is reasonably accurate.

Undiscovered recoverable reserves are analyzed through geologic, seismic, and other types of exploratory methods. At best, the results of such tests yield educated guesses that, within broad probability levels, certain quantities of recoverable oil and gas exist. It is only when actual drilling occurs that estimates take on greater degrees of accuracy.

Within the last two years, the USGS has been reducing its estimates of offshore oil and gas reserves. Table 1 presents the Survey's latest published data as of June, 1975:

TABLE 1.—U.S. OFFSHORE OIL AND NATURAL GAS RESERVES AND RESOURCES

	Demonstrated reserves		Undiscovered recoverable resources		
	Oil (billions of barrels)	Gas (trillion cubic feet)	Oil (billions of barrels)	Gas (trillion cubic feet)	Gas liquids (billions of barrels)
Alaska.....	0.150	0.145	3-31	8-80	1.1
Pacific.....	1.116	.463	2-5	2-6	.1
Gulf of Mexico.....	2.262	35,348	3-8	18-91	1.3
Atlantic.....			0-6	0-22	.3
Total.....	3.528	35.956	8-50	28-199	2.8
Statistical mean.....			26	107	

Note: Undiscovered potential resources of oil, gas, and liquid gas have been estimated to range from 95 percent to 5 percent probability for all areas.

Source: U.S. Department of the Interior, Geological Survey. The undiscovered potential resources estimates are for seabed area to a depth of 200 meters. Potential oil and gas from the continental slope and rise are not included in the estimates.

U.S. Oil and Gas Production From the OCS

The primary source of U.S. offshore oil and gas production comes from the Gulf of Mexico. In 1974, the Gulf accounted for approximately 70 percent of the offshore oil produced and over 95 percent of the offshore natural gas produced. Most of this hydrocarbon production now comes from the federally-owned Outer Continental Shelf.

TABLE 2. OIL AND CONDENSATE
TOTAL OFFSHORE "STATE" AND "FEDERAL OCS"
(In thousands of barrels)

	Louisiana			Texas		
	Percent			Percent		
	Barrels	State	OCS	Barrels	State	OCS
Prior.....	54,803	98	2			
1954.....	15,926	79	21	10	100	
1955.....	25,731	74	26	156	99	1
1956.....	40,906	73	27	140	90	10
1957.....	52,835	70	30	256	98	2
1958.....	57,381	57	43	470	100	
1959.....	72,793	51	49	499	100	
1960.....	88,122	44	56	567	100	
1961.....	103,197	38	62	292	100	
1962.....	126,801	29	71	803	100	
1963.....	149,087	30	70	669	92	8
1964.....	173,709	29	71	578	99	1
1965.....	199,293	27	73	557	99	1
1966.....	243,080	23	77	1,246	29	71
1967.....	284,033	23	77	3,400	16	84
1968.....	329,922	20	80	3,400	9	91
1969.....	365,691	18	82	3,109	11	89
1970.....	398,378	16	84	3,046	26	74
1971.....	444,363	13	87	2,885	42	58
1972.....	452,584	14	86	3,035	43	57
1973.....	429,465	13	82	2,285	29	71
1974.....	389,260	12	88	1,869	26	74
Total.....	4,497,360	23	77	29,272	37	63

Source: U.S. Geological Survey, June, 1975 Harris, Walter M., Piper, Sharon K., McFarlane, Bruce E., "Outer Continental Shelf Statistics."

TABLE 3. GAS
TOTAL OFFSHORE "STATE" AND "FEDERAL OCS"
(in millions of cubic feet)

	Louisiana			Texas		
	Millions of cubic feet	Percent		Millions of cubic feet	Percent	
		State	OCS		State	OCS
Prior.....	91,675	78	22			
1954.....	81,325	31	69	3,440	100	
1955.....	121,279	33	67	6,880	100	
1956.....	136,527	39	61	6,880	100	
1957.....	160,472	49	51	13,765	100	
1958.....	233,967	45	55	24,080	100	
1959.....	329,280	37	63	24,080	100	
1960.....	408,388	33	67	30,960	100	
1961.....	458,481	31	69	13,760	100	
1962.....	588,361	23	77	41,280	100	
1963.....	706,545	20	80	30,960	100	
1964.....	783,474	21	79	30,960	100	
1965.....	871,124	26	74	27,520	100	
1966.....	1,265,899	24	76	59,259	29	71
1967.....	1,655,223	34	66	127,473	22	78
1968.....	2,057,291	31	69	154,631	29	71
1969.....	2,478,745	26	74	240,212	47	53
1970.....	2,800,104	19	81	264,420	50	50
1971.....	3,219,200	18	82	387,245	67	33
1972.....	3,480,831	17	83	156,772	6	94
1973.....	3,614,892	15	85	250,338	41	59
1974.....	3,871,964	14	86	254,338	37	63
Total.....	29,415,047	22	78	2,149,253	49	51

Source: U.S. Geological Survey, *op. cit.*

Of all domestic oil and gas produced, some 17 percent now comes from the continental shelf. However, the prospects are that the U.S. continental shelf can be the largest domestic source of oil and gas between now and the 1990's.¹⁹

Onshore reserves, although perhaps larger in total than our OCS resources, are now being discovered in increasingly smaller structures—structures which are more expensive and slower to produce than the larger ones discovered in the early 20th Century. For example, in the last five years, of the 38,000 onshore wells which have been drilled in the continental United States, only five fields of over 100 million barrels of oil have been discovered.

In contrast, latest USGS data indicate the possibility that OCS oil and gas reserves may be found in large structures which can be translated into expeditious production sooner than in fields onshore. Some studies estimate that offshore oil and gas may comprise as much as one-fourth to one-third of the total U.S. oil production by 1985.

Emerging Issues in U.S. Offshore Oil and Gas Development OCS Activity: After Santa Barbara

Offshore drilling for oil and gas has been occurring since the beginning of this century. But for decades, it was carried out in relatively shallow state waters. As technology advanced, deeper depths could be penetrated and the search for petroleum hydrocarbons in the oceans moved farther out from shore.

¹⁹ For a detailed discussion of the studies which have led to this conclusion, see "Effects of Offshore Oil and Natural Gas Development on the Coastal Zone," *op. cit.*, particularly Chapter 1.

This new technology, then, was a major ingredient in the Congressional action of 1953, noted above. Between the passage of the Outer Continental Shelf Lands Act and 1968, the Interior Department conducted 23 OCS oil and gas lease sales. A total of 1,417 tracts covering 6,411,626 acres were sold for purposes of exploration and development.

Essentially, the OCS process was subject to little national scrutiny, although localized impact, particularly in the coastal states bordering the Gulf of Mexico, was the subject of some concern.

A major change occurred when an OCS drilling project in the Santa Barbara Channel was the scene of a major blowout in January, 1969. The resulting oil spill damage to the ecology of the Channel raised the OCS issue to national attention.

The following chronology covers the period from the Santa Barbara incident to the present. It highlights only selected, although major, OCS events.

Chronology of Selected Recent OCS Events, 1969-76

January 28, 1969.—A blowout from offshore oil drilling in Santa Barbara Channel resulted in the largest oil spill in United States history.

February 5, 1969.—The Coast Guard announced that the federal government had taken control of the oil containment and clean-up operations in the Santa Barbara Channel.

February 18, 1969.—Secretary of the Interior Walter Hickel held the oil companies responsible for cleaning up any pollution resulting from offshore drilling operations, even if there was no proof that the companies were at fault.

February 19, 1969.—The State of California announced that it would sue the federal government, Union Oil Company, and three other companies for \$1.06 billion for damage caused by oil leaks from offshore wells.

September 17, 1969.—The Department of the Interior issued new regulations pertaining to mineral leasing on the OCS (Circular 2264).

June 1971.—The Secretary of the Interior first promulgated a tentative five-year OCS leasing schedule.

November 8, 1971.—A group of 60 Congressmen representing Eastern states sent a letter to the Secretary of the Interior demanding a halt to the Department's plans to lease offshore drilling sites along the Atlantic coast.

January 1972.—An injunction against a lease sale offshore Louisiana was upheld by the U.S. District Court of Appeals on the grounds that the Department of the Interior failed to consider adequately the alternative sources of fuel in preparing its environmental impact statement (EIS) required under the National Environmental Policy Act.

January 11, 1972.—Secretary of the Interior Rogers C. B. Morton assured representatives of fourteen East Coast states that they would have a role in OCS decision-making. He also said that "at the earliest, even if the legal and environmental hurdles were crossed, it would be seven to ten years before we could get significant production from the Atlantic Outer Continental Shelf, if indeed, oil exists there. We do not know if it does."

March 22, 1972.—The Department of the Interior announced plans to conduct geological surveys and bottom sampling along the Atlantic OCS north of Cape Hatteras in the coming summer.

March 27, 1972.—Officials from Massachusetts, New York, Connecticut, Rhode Island, Maine, and New Hampshire scheduled a meeting in Washington, D.C. with their Congressional representatives and Interior Secretary Morton to halt plans for core drilling and other geological investigations by the U.S. Geological Survey on the Atlantic Shelf.

April 18, 1973.—President Nixon announced that the OCS leasing rate would be increased from one million acres per year to three million acres per year, and that the five-year tentative leasing schedule would be revised to reflect this acceleration.

April 18, 1973.—President Nixon directed the Council on Environmental Quality to study the environmental impact of oil and gas production on the Atlantic and Gulf of Alaska OCS.

July 1, 1973.—The Interior Department announced its decision to postpone planned geological and geophysical investigations in the Atlantic OCS off New England, while allowing the continuation of similar work in the Gulf of Alaska and adjacent Lower Cook Inlet.

July 10, 1973.—The Bureau of Land Management issued a proposed schedule of provisional OCS leasing, from 1973 to the end of FY 1978.

September 12, 1973.—The CEQ opened public hearings on drilling for oil and gas off the East Coast.

December, 1973.—The Bureau of Land Management (BLM) opened an Atlantic OCS in New York City.

December 14, 1973.—The Sierra Club, two Florida Congressmen, and other environmental groups filed suit to block a federal lease sale off the shores of Mississippi, Florida, and Alabama. A Federal District Court in Tampa ruled that the Sierra Club did not show sufficient cause to hold up the sale and refused to grant the requested injunction.

December 20, 1973.—The Department of the Interior received close to \$1.5 billion in bids at the federal lease sale of tracts off of Florida, Mississippi, and Alabama.

January 23, 1974.—The President directed that OCS leasing be further accelerated and that ten million acres be leased in 1975.

February 20, 1974.—The Department of the Interior published in the *Federal Register* a request for comment on 17 potential OCS oil and gas leasing areas. The responses ranked the areas of greatest potential as the Gulf of Alaska, the Central Gulf of Mexico, and the Beauford Sea respectively. Four companies ranked areas according to which frontier areas they would prefer to have leased first. In order of leasing priority, these areas were the mid-Atlantic, the Gulf of Alaska, and Cook Inlet.

March, 1974.—The Secretary of the Interior created the OCS Research Management Advisory Board (recently redesignated as the OCS Environmental Studies Advisory Committee). This group advises the Secretary on the planning and implementation of BLM's environmental program, including baseline and monitoring studies and is composed of state and federal representatives.

April 23-May 3, 1974.—The Senate Committee on Commerce held hearings on OCS oil and gas development pursuant to S. Res. 222.

May, 1974.—The U.S. Geological Survey (USGS) released a final environmental statement on proposed oil and gas development in the Santa Barbara Channel.

May 1, 1974.—The Department of the Interior promulgated OCS Order #11 for development of certain tracts in the Gulf of Mexico.

May 21, 1974.—The Senate Committee on Commerce, Subcommittee on Oceans and Atmosphere, held additional hearings pursuant to S. Res. 222 on OCS development.

July 16-23, 1974.—The Senate Committee on Interior and Insular Affairs held hearings on S. 3221, a bill to amend the Outer Continental Shelf Lands Act of 1953.

August 5, 1974.—The Senate Commerce Committee held hearings in Boston on OCS oil and gas development.

September 18, 1974.—The Senate passed, on a 64-23 vote, S. 3221, a bill which provided for the orderly development of oil and gas on the OCS.

October 1, 1974.—The USGS published a notice of intention to develop operating orders prior to the commencement of drilling or producing in the Atlantic.

October 7, 1974.—The Senate Judiciary Subcommittee on Administrative Practice and Procedure was told, in testimony given by Congressman John D. Dingell of Michigan, that the possibility of the Interior Department dealing with a ten million acre OCS leasing program was "appalling". Mr. Dingell noted that the investigation conducted by his House Small Business Subcommittee on the Activities of Regulatory Agencies indicated that Interior was unable to assure "that the government received fair value for the (OCS) tracts it leases, that the government knows the amount of the reserves underlying the leases, or that the government is capable of administering and supervising operations on leases once they are let."

October 9, 1974.—Senator John V. Tunney of California introduced S. Res. 426, which would delay the Interior Department's intention to lease ten million acres in 1975 until the coastal states have completed or "made reasonable progress" toward the completion of their coastal zone management programs.

October 16, 1974.—The Department of the Interior conducted an experimental lease sale in New Orleans, in which the sale of certain tracts was based on royalties the government would receive from production.

October 18, 1974.—The Interior Department issued a draft environmental impact statement on the proposed ten million acre OCS leasing program.

November 13, 1974.—President Ford met with 18 coastal state governors or their representatives to discuss the urgency of "stepping-up" U.S. development of offshore energy resources. Several Departmental heads also participated.

November 13, 1974.—The Interior Department issued a revised OCS lease schedule through 1978. The schedule included five areas in the Atlantic, six offshore Alaska, and others in the Gulf of Mexico and offshore California.

November 14, 1974.—Interior Secretary Morton, who was also serving as Chairman of the Administration's Energy Resources Council,

told a meeting of coastal states governors that "expeditious development of the Outer Continental Shelf is the keystone to meeting the Nation's energy needs in the late 1970's and 1980's."

December 11, 1974.—The USGS issued new OCS orders requiring all geological and geophysical permits to require the permittee to furnish new and processed data upon the request of the USGS Supervisor.

December 17, 1974.—The Interior Department issued a call for nominations and comments on a possible OCS sale of 20.6 million acres in the southeastern part of the Bering Sea, off Alaska.

January–February, 1975.—A series of meetings and conferences were held along the East Coast by coastal state governors and gubernatorial representatives to discuss, at least in part, the OCS issue. Statements and resolutions were promulgated by the Atlantic coastal state governors, the New England Governors of the New England Regional Commission, and the National Governors Conference, among others. The positions of the states generally called for greater participation for adjacent coastal states and communities in the Interior Department OCS decision-making, state and local access to more geological and geophysical data on oil and gas resources lying off their shores, a separation of exploration and development stages to access the potential impact of OCS activity onshore, and a sharing of federal OCS revenues or a provision of federal assistance to aid states to plan for and to ameliorate the negative effects of OCS activity.

January 15, 1975.—President Ford issued his State of the Union message in which he set forth national energy goals to "reduce oil imports by one million barrels of oil per day, to end vulnerability to economic disruption by foreign suppliers by 1986, and to . . . have the ability to supply a significant share of the energy needs of the free world by the end of the century."

January 15, 1975.—Senator Ted Stevens of Alaska introduced S. 130, a bill which would distribute a portion of OCS revenues to states.

February, 1975.—The House Committee on Interior and Insular Affairs, Subcommittee on Public Lands, held hearings to determine whether or not the United States is getting maximum gas production from wells on public lands, including the OCS.

February, 1975.—The Interior Department conducted OCS lease sale #37 in South Texas. 626,585 acres were leased, and the total amount of the high bids accepted by the Department was \$274,690,956.

February, 1975.—The Interior Department extended, then later withdrew, an invitation to bid on OCS tracts off the Atlantic Coast. The Department promised the coastal states that it would wait until after a Supreme Court decision on ownership of offshore mineral resources (*U.S. v. Maine*).

February 3, 1975.—The Administration asked Congress for an extra \$3 million in supplementary funds for the Coastal Zone Management program. The money is to be granted to states for OCS-related planning efforts in conjunction with their coastal management work underway.

February 6, 1975.—The Interior Department held hearings in Beverly Hills, California, concerning their proposal to lease 1.6 million acres off the California coast. The testimony was generally against the proposal.

February 10, 1975.—Two counties and five towns on New York's Long Island sued the Interior Department to block its plans to sell ten million acres of offshore tracts for oil and gas development.

February 21, 1975.—A draft environmental impact statement on the proposed 1.6 million acre California lease sale is released by the Interior Department for public review.

February 21, 1975.—New regulations were issued by the Interior Department which bar joint bidding among companies producing more than 1.6 million barrels.

February 24, 1975.—The United States Supreme Court began hearing argument on the cases related to the claims of states to the OCS (*U.S. v. Maine*).

March 14, 1975.—The Senate Interior Committee began joint hearings with the Commerce Committee's National Ocean Policy Study on OCS development.

March 26, 1975.—The Interior Department called for nominations of offshore tracts in the mid-Atlantic area.

April 1975.—The Interior Department proposed new regulations defining policies, procedures and requirements for geological and geophysical exploration of the OCS.

April 17, 1975.—The Supreme Court rules in the *U.S. v. Maine, et al*, case that the United States federal government has the exclusive sovereign rights to the resources of the seabed and subsoil of the Atlantic Ocean seaward of the three-mile limit.

April 21, 1975.—The House Appropriations Committee began hearings on OCS leasing.

April 22, 1975.—The House adopted H. Res. 412, which established the Ad Hoc Select Committee on the Outer Continental Shelf. The Select Committee is comprised of members from the House Merchant Marine and Fisheries, Judiciary, and Interior and Insular Affairs Committees. Congressman John M. Murphy of New York was appointed Chairman. H.R. 6218 was referred to the Committee.

May 1975.—The Interior Department held lease sale #38. Tracts in the Central Gulf of Mexico, off Texas and Louisiana, totalling 406,942 acres were sold. High bids which totaled \$232,916,050 were accepted by the Department of the Interior.

June 7, 1975.—The House Ad Hoc Select Committee on the OCS held its first public hearings in New Orleans.

June 9, 1975.—The House Select Committee was briefed on various aspects of OCS oil and gas development by the Congressional Research Service of the Library of Congress, the Office of Technology Assessment, the General Accounting Office, and the staffs of the National Ocean Policy Study and the Interior and Insular Affairs Committee of the Senate.

June 11, 1975.—The Interior Department announced that 20 oil and gas companies requested permission to tap petroleum and natural gas reserves from the Baltimore Canyon structure off New Jersey, New York, Delaware and Maryland.

June 17, 1975.—The House Select Committee began three days of hearings in Washington, D.C.

June 27, 1975.—The House Select Committee left for a seven-day investigative trip to England, Scotland, and Norway for briefings on the offshore drilling experience in the North Sea.

July 9, 1975.—The Interior Department extended the public comment period on the Santa Barbara Channel draft environmental impact statement from July 31 to September 1, 1975.

July 1975.—The Interior Department held OCS lease sale #38a in the Central Gulf of Mexico. 336,301 acres off the coasts of Texas and Louisiana were leased with a high bid total of \$163,214,006.

July 16, 1975.—The Senate passed S. 586 by a 73-15 vote. The bill would make substantial amendments to the Coastal Zone Management Act of 1972, including the establishment of an impact fund to assist coastal states to plan for and ameliorate the adverse effects of energy activities in the coastal zone.

July 17, 1975.—The Senate Interior and Insular Affairs Committee reported out favorably S. 521, a bill to amend the Outer Continental Shelf Lands Act of 1953.

July 18, 1975.—The House Select Committee began two days of hearings in New York City to discuss the exploration and development of the Baltimore Canyon trough and the impact of that activity on North Atlantic coastal states and communities.

July 25-26, 1975.—The House Select Committee held hearings in Ocean City, New Jersey and Philadelphia, Pennsylvania.

July 30, 1975.—The Senate passed S. 521 on a 67-19 vote.

August 1975.—The California state legislature passed, and the Governor signed into law, a ban on the laying of any pipelines across state waters to onshore facilities. The restriction extends to 1978 or until the state adopts a long-term coastal plan which is being developed by a state commission.

August 2, 1975.—The House Select Committee began a seven-day schedule of public hearings and investigatory trips to California and Alaska. Hearings were held in Los Angeles, and in San Francisco, in California, and Yakutat, Cordova, and Anchorage, in Alaska. Field investigations were conducted in the Santa Barbara Channel, the Cook Inlet area near Kenai, Alaska, and the North Slope oil pipeline and facilities in Prudhoe Bay, Alaska.

September 12-13, 1975.—The House Select Committee began two days of hearings in New London, Connecticut, and Boston on the impact from potential exploration and development of the Georges Bank area off New England.

September 26, 1975.—The Interior Department prepared a final environmental impact statement for the proposed program to accelerate oil and gas leasing.

September 26, 1975.—The House Select Committee held a public hearing in Ocean City, Maryland.

October 1975.—The Interior Department approved an accelerated offshore oil and gas leasing plan. The Department opened the way for six lease sales through 1978, including at least one each in the Atlantic, Pacific and Alaskan frontier areas.

October 1, 1976.—The Interior Department established an OCS Advisory Board with members from the coastal states, the private sector, and the federal government. The purpose of the Board is to advise the Department on all aspects of exploration and development of OCS resources.

October 1, 1975.—The Interior Department published the final regulations banning joint bidding among the largest oil companies which

produce more than 1.6 million barrels of oil and natural gas equivalent per day.

October 15, 1975.—The California Coastal Zone Conservation Commission held up an oil company permit to drill 17 new wells in state waters within the three-mile limit at Santa Barbara. The Commission noted that the proposed onshore facilities were unacceptable.

October 31, 1975.—The Interior Department issued a call for nominations for offshore tracts in the western Gulf of Alaska.

November 1975.—The Interior Department approved the first Atlantic offshore stratigraphic tests.

November 4, 1975.—The Interior Department published final regulations providing for new procedures for state governmental participation in OCS decisions, including a sixty-day review and comment period on the lease development plan submitted by industry.

November 13, 1975.—The House Select Committee began three days of hearings in Washington, D.C. These hearings concluded the Committee's public hearing schedule on H.R. 6218.

November 17, 1975.—The USGS revised OCS Order No. 2 in the *Federal Register* to update requirements for drilling procedures on the OCS in the Pacific area. The order included requirements for well casing and cementing, blowout prevention, mud program supervision and training, directional surveys, hydrogen sulfide, etc.

November 17, 1975.—The United States District Court in Los Angeles rejected a suit brought by the State of California to delay the Interior Department's planned OCS sale off the southern part of the state.

December 5, 1975.—The United States District Court in Washington, D.C. turned down a request for an injunction to halt the Interior Department's proposed OCS Sale #35 off Southern California. The suit was brought by the State of California and a coalition of the state's cities and counties.

December 10, 1975.—The Interior Department released a draft Environmental Impact Statement for proposed OCS sale #40 off the Mid-Atlantic Coast in the Baltimore Canyon Trough area.

December 11, 1975.—The Interior Department held OCS lease sale #35. 310,049 acres were sold off the coast of Southern California with the high bids totaling \$417,312,000. As an experiment, three of the tracts were sold with a fixed royalty of 33⅓ percent—double the normal rate.

December 23, 1975.—The Administrator of the Environmental Protection Agency (EPA), Russell E. Train, recommended to the Interior Department that it postpone indefinitely its scheduled OCS sale of tracts in the northern Gulf of Alaska. Train cited environmental uncertainties and the need for additional study in his letter to the Secretary of the Interior.

January 23, 1976.—The Chairman of the White House Council on Environmental Quality, Russell W. Peterson, asked the Interior Department to delay its scheduled OCS sale of tracts in the northern Gulf of Alaska.

January 23, 1976.—The Interior Department announced an amendment to the joint bidding ban previously promulgated. Under the amendment, major companies may be exempted from the restriction in frontier high risk, or high cost areas.

January 27, 1976.—Public hearings were held in Atlantic City, New Jersey on the draft Environmental Impact Statement for the proposed OCS lease sale of tracts in the Mid-Atlantic Baltimore Canyon area.

February 1976.—A consortium of oil companies began a \$9 million program of stratigraphic testing in the Baltimore Canyon and Georges Bank areas off the Atlantic coast.

February 4, 1976.—By a 36-0 vote, the House Merchant Marine and Fisheries Committee reported out favorably H.R. 3981 (H. Rep. 94-878). The bill, prepared by the Oceanography Subcommittee, chaired by Representative John M. Murphy of New York, amends the Coastal Zone Management Act of 1972, including the creation of a \$1.5 billion Coastal Energy Activity Impact program to provide federal assistance to coastal states impacted by OCS and other coastal-related energy activities. The comparable Senate legislation is S. 586.

February 18, 1976.—Secretary of the Interior Thomas S. Kleppe announced the decision to move ahead with the northern Gulf of Alaska OCS sale, but reduced the area to be offered for sale from 1.8 million to 1.1 million acres. The Secretary noted that the tracts removed were those determined to be most environmentally or geologically hazardous.

February 18, 1976.—The Interior Department conducted OCS lease sale #41. Thirty-four tracts offshore Louisiana and Texas in the Gulf of Mexico were sold for accepted high bids totalling \$175,976,493.

February 19, 1976.—The House Judiciary Committee held hearings on the OCS joint bidding ban.

March 2, 1976.—The Interior Department announced the availability of a list of 152 tracts totalling 865,364 acres which are being considered for a possible OCS lease in Alaska's lower Cook Inlet.

March 3, 1976.—Because of restrictions placed on its proposed on-shore facilities by the California Coastal Zone Conservation Commission, Exxon Corporation declared its intention to conduct its Santa Barbara OCS extraction and shipping operations outside state waters. The Interior Department indicated that it would not withdraw its approval of the (Exxon) offshore terminal.

March 4, 1976.—The House Select Committee began mark-up of H.R. 6218.

March 5, 1976.—The Interior Department announced the publication of the final Environmental Impact Statement on possible OCS development in the Santa Barbara Channel under existing law.

March 11, 1976.—The House passed H.R. 3981, the Coastal Zone Management Act Amendments, by a 370-14 vote.

March 16, 1976.—The Interior Department announced that a list of 299 tracts had been tentatively selected for consideration in proposed OCS sale #45. The tracts, totalling 1.6 million acres, are located in the southeastern Bering Sea area offshore Alaska.

March 16, 1976.—The Interior Department asked for industry nominations of tracts for proposed OCS sale #47 in the Gulf of Mexico.

March 22, 1976.—The Senate disagreed with the House version of the Coastal Zone Management Act Amendments (H.R. 3981), requested a conference, and appointed Senate Conferees.

March 23, 1976.—The House insisted on its amendments to S. 586 and appointed its Conferees.

April 6, 1976.—A request for an injunction to block the scheduled OCS lease sale #39 in the northern Gulf of Alaska was denied in the U.S. District Court. The suit had been brought by the State of Alaska and the City of Yakutat.

April 13, 1976.—The House Select Committee completed mark-up on H.R. 6218 and favorably reported the bill for House consideration.

• *April 13, 1976.*—The Interior Department conducted OCS lease sale #39 in which 81 of 189 tracts offered in the northern Gulf of Alaska were sold for high bids totalling \$571.8 million.

OCS Energy Resource Development in a Setting of Conflict

If the Santa Barbara oil spill raised the level of environmental consciousness about OCS operations, the shortfall of domestic energy production and the Arab oil embargo of 1973 had an equally dramatic impact. The potential oil and gas resources on the OCS could, to some undetermined extent, reduce the country's dependence on foreign energy supplies and thus its economic vulnerability in relation to the OPEC nations.

Both trains of thought—environmental protection and the acceleration of OCS oil and gas development—competed for primary ranking in the list of national priorities. President Nixon called for stepping up the OCS lease sale schedule while, at the same time, environmental and citizen organizations, commercial and recreational fishing interests, and other groups, expressed public concern over the possible effects of the proposed rapid development.

Intermixed in this debate were new dimensions of federal/state relations, the genesis for which was President Nixon's theory of New Federalism. State and local governments argued that it was their beaches, estuaries, and other shoreline areas which could be severely damaged by an OCS-related spill. It was their onshore coastal lands which would be the situs for the necessary support facilities. It was their coastal communities which would experience possible "boom town" effects from the offshore development. Yet, this was a federal decision and a federally-administered process over which the states had little, if any, control, and from which the states received no financial assistance. Monies received from OCS bonuses, rentals and royalties went into the United States Treasury—not those of the affected coastal states.¹⁹²

Consequently, while states and local governments were joining forces with some environmental groups based on ecological concerns, they were also expressing their disapproval of the Interior Department's OCS leasing process. It is, many coastal state governors argued, a process in which the affected governments had no true participation and no access to important data. The 1975 *U.S. v. Maine* case, in which thirteen Atlantic Coast states claimed ownership of the continental shelf off their shores, can be viewed, in part, as a symbolic protest against the policies and procedures of the federal government in general and the Department of the Interior, in particular.

A number of lawsuits have been filed by states and communities to postpone proposed OCS lease sales on the Interior Department's ac-

¹⁹² To date, the Interior Department has collected \$20.5 billion in OCS bonuses, rentals and royalties. This includes the April, 1976 northern Gulf of Alaska sale.

celerated schedule. None of these suits have yet resulted in the requested injunctions.

Despite this, three different trends have been manifested in recent OCS lease sales.

There has been a considerable slippage in the Interior Department's lease sales schedule. Although six sales were scheduled for 1975, only four were conducted. Six sales were also planned for 1976, but two have been held to date and only two more²⁰ are projected for the remainder of this year.

The number of tracts actually offered for sale (compared with the number nominated) and the number actually bid on (compared with the number offered) appears to be smaller than what would be expected under an accelerated OCS program. The Secretary of the Interior withdrew a number of tracts shortly before the California sale in December, 1975 and the Alaskan sale in April, 1976. And, in both cases, the oil companies bid on significantly fewer tracts than those offered.²¹ (See Table 4.)

Recent bonus bids have been somewhat lower than anticipated by the Interior Department. The December, 1975, California sale is particularly noteworthy in this regard. Interior predicted that bidding might run as high as \$2 billion, although only \$417.3 million was finally accepted.

Clearly, the explanation for these apparent trends is multidimensional. The lack of experience in frontier areas (and, in Alaska, hazardous conditions); deeper OCS depths requiring more sophisticated and expensive equipment and technologies; the unpredictability of the accelerated lease schedule itself which may require a more rapid expenditure of capital for bonus money; the potential threat of state and community law suits to block the location of onshore facilities; and the continued opposition of some groups to stepping up OCS development are all relevant factors in explaining these recent patterns.

In summary, the "shortfall" in recent OCS leasing activity may be the result of a myriad of uncertainties. Some, of course, are beyond the control of legislation. Others, however, are subject to resolution by Congressional and Executive action.

²⁰ The two remaining sales scheduled for this year are: (1) sale No. 40, Mid-Atlantic (August); and (2) sale No. 44, Gulf of Mexico, drainage (October). The projected 1977 schedule is presently being reviewed in the Department of the Interior and has not yet been released.

²¹ It should be noted that it is premature to determine whether these patterns will persist, since there are a limited number of cases in the sample.

TABLE 4.—OCS LEASE SALES

OCS sale number	Date of sale	State	Number of tracts offered	Acres offered	Number of tracts bid on	Acres bid on	Number of tracts leased	Acres leased	Total bonus
(1) Jan. 14, 1969	-----	Louisiana	38	95,389	26	61,628	20	48,501	\$44,037,339
(2) Dec. 16, 1969	-----	do	27	81,764	16	60,153	16	62,153	66,908,195
(3) July 21, 1970	-----	do	34	71,360	21	50,883	19	44,642	97,763,013
(4) Dec. 15, 1970	-----	do	127	583,485	127	583,485	118	551,398	846,781,680
(5) Nov. 4, 1971	-----	do	18	55,872	13	42,222	11	37,321	91,301,523
(6) Sept. 12, 1972	-----	do	78	346,682	74	346,683	62	297,321	585,827,925
(7) Dec. 19, 1972	-----	do	132	604,029	119	548,374	116	535,874	1,645,513,631
(8) June 19, 1973	-----	Texas-Louisiana	129	697,643	104	546,573	100	547,173	1,591,337,300
(9) Dec. 20, 1973	-----	Mississippi, Alabama, and Florida	147	817,297	89	496,917	87	485,397	1,431,055,231
(10) Mar. 26, 1974	-----	Louisiana	206	930,918	114	522,397	91	421,218	2,082,510,854
(11) May 28, 1974	-----	Texas	245	1,355,678	123	680,335	102	565,112	1,471,851,831
(12) July 30, 1974	-----	Louisiana-Texas	258	1,299,739	49	249,704	19	100,241	30,236,800
(13) Oct. 16, 1974	-----	Louisiana	287	1,370,031	149	683,172	136	631,832	1,427,232,455
(14) do	-----	Louisiana-Royalty	10	51,515	8	40,755	8	40,755	1,018,875
(15) Feb. 4, 1975	-----	Texas	515	2,870,344	143	796,367	113	626,585	274,680,955
(16) May 28, 1975	-----	Louisiana-Texas	283	1,346,432	102	486,327	86	401,912	232,916,050
(17) July 28, 1975	-----	do	345	1,772,958	80	408,009	66	336,301	163,214,036
(18) Dec. 11, 1975	-----	So. California	231	1,258,180	70	384,540	56	310,043	417,312,141
(19) Feb. 18, 1976	-----	Gulf of Mexico	132	1,687,604	41	191,718	34	161,285	175,976,433
(20) Apr. 13, 1976	-----	Gulf of Alaska	189	1,006,000	81	465,719	76	437,253	558,836,587
Total	-----	-----	3,431	17,348,929	1,549	7,605,977	1,336	6,641,258	13,332,423,945

1 The numbering of OCS lease sales began in 1975.

The Recent Congressional Response

The first major Congressional action to amend the Outer Continental Shelf Lands Act occurred during the second session of the 93d Congress.

On September 18, 1974, the Senate passed S. 3221, the Energy Supply Act of 1974. S. 3221 was an omnibus bill providing for changes in the bidding system, OCS revenues to the states, strict liability for accidents, increased exploration by the government, increased inspections of installations by the government, increased research of oil and gas resources, strict safety and environmental regulations, citizen suits to enforce provisions of the OCS Lands Act, strict liability for oil spills, power to the governor of the adjacent states to request postponement of lease sales, requirements that areas with lease environmental hazard be leased first, and establishment of a national strategic energy reserve. No action was taken by the House on this bill.

In the 94th Congress, the Senate again took the first step to amend the Outer Continental Shelf Lands Act, having established a public record during its consideration of S. 3221. On July 30, 1975, by a vote of 67-19, the Senate passed S. 521, a bill to provide for the orderly exploration of energy resources on the OCS.

The Outer Continental Shelf Management Act of 1975 provides for:

- a comprehensive five-year leasing program to be prepared by the Secretary of the Interior showing the size, timing and location of leasing activity;
- the separation of the exploratory phase from the development phase of activity on a leased area;
- the preparation of a development and production plan which is to be submitted to the Secretary and to coastal state governors for review and comment;
- the Interior Department to contract for exploratory drilling on an experimental basis under certain conditions;
- additional methods of leasing OCS tracts which must be used in at least half of future frontier area sales;
- a special oil spill liability fund created by a 2½ cents fee on each barrel of OCS oil; and
- federal assistance to coastal states, administered through the Coastal Zone Management program, for energy facility planning and energy-related impacts in the coastal zone.

On July 16, 1975, the Senate passed S. 586 by a 73-15 vote. This legislation amends the Coastal Zone Management Act of 1972 and includes the establishment of a Coastal Energy Facility Impact Program. By the use of grants, loans, automatic OCS-related payments, and federally-guaranteed state and local bonds, S. 586 provides a federal assistance network to aid coastal states which are likely to be impacted by OCS and other types of energy activities in the coastal zone.

In the House, S. 586 was referred to the Oceanography Subcommittee of the Merchant Marine and Fisheries Committee. On February 4, 1976, the full Committee reported its version of the Senate legislation on a 36-0 vote. H.R. 3981 was passed by the House on March 11, 1976 on a 370-14 vote. A Conference Committee is scheduled to meet

soon to reconcile the differences between the bills. The Coastal Energy Activity Impact program contained in H.R. 3981 has been incorporated in H.R. 6281 as Title IV (See Section-by-Section explanation of this provision).

Whereas the amendments to the Coastal Zone Management Act were within purview of only one Committee in the House, jurisdiction over the Outer Continental Shelf program was highly fragmented. A special procedure had to be adopted.

The House of Representatives: Establishment of a Special Committee

Early in the first session of the 94th Congress, some Members of the House of Representatives, became concerned that bills to amend the Outer Continental Shelf Lands Act of 1953, would have to be referred to three or more committees of the House pursuant to Rule X, Clause 5(c).²² It was recognized that it would be extraordinarily difficult and time-consuming for the House to act on a major revision of the Outer Continental Shelf Lands Act if several Committees were to exercise concurrent jurisdiction over different aspects of any new legislation. Action on this legislation needed to be prompt especially as the Administration was accelerating the federal program for the lease of outer continental shelf lands for oil and gas exploration and production.

In March of 1975, it was recommended to the Speaker of the House that a special Committee be created for the sole purpose of considering such legislation and reporting it to the full House, and that the special Committee be composed of Members of the various Committees with jurisdiction in this area. Thereafter, on April 22, 1975, Majority Leader Thomas P. O'Neill introduced H.Res. 412, requesting the establishment of an Ad Hoc Select Committee on Outer Continental Shelf. Membership of, and staff for, this special Committee was to be drawn from the Committee on Merchant Marine and Fisheries, the Committee on Interior and Insular Affairs, and the Committee on the Judiciary. On the same day, the Honorable John M. Murphy, Peter W. Rodino, and Leonor K. Sullivan introduced H.R. 6218, a comprehensive bill to amend the OCSLA. That day the House passed H.Res. 412, by unanimous consent, and the Ad Hoc Committee was established. H.R. 6218 was referred to the Select Committee, which was directed to transmit its findings and report on this matter to the full House by January 31, 1976. By House Resolutions 977 and 1121, the reporting date was extended to May 4, 1976.

Questions of jurisdiction and organization were resolved during the first three meetings of the Committee on April 30, May 13, and June 24, 1975, and an additional three members were added to the Committee, bringing it to a total of nineteen members. The agenda for hearings, briefings and inspections was set, and the Committee commenced with its business. The first inspection and set of hearings was held in Louisiana, where the Committee visited offshore drilling platforms, an oil refinery, and other OCS-related industry.

Hearings were begun on June 7 in New Orleans, where 32 witnesses testified, including the Governors of Louisiana and Texas, representa-

²² New Rule X Clause 5(c), adopted January 3, 1975, allows the Speaker to refer a bill simultaneously to two or more Committees. Prior to the adoption of this rule, a bill or resolution could not be divided for multiple Committee referral.

tives of Louisiana state and local government, of oil industry, of on shore service industry, of environmental groups, and representatives of regional offices of federal agencies having jurisdiction over various aspects of OCS development.

Three days of hearings were then held in Washington, D.C. on June 17, 18, and 19, where the Committee heard testimony from Members of Congress, federal agencies, and representatives of environmental, professional, industry, and governmental associations.

On June 26, members of the Committee and staff flew to London, Scotland and Norway on a seven-day series of briefings, inspections, and meetings dealing with oil and gas exploration and development in the North Sea.

Hearings were held in New York City on July 18 and 19, 1975, to consider the problems related to expected OCS development off the New York and northern New Jersey coast. Prior to the hearings, the Committee attended a briefing presented by regional representatives of the Coast Guard, Environmental Protection Agency, Federal Energy Administration and the Interior Department's Bureau of Land Management. Another briefing was presented by Rutgers University based on data of an Office of Technology Assessment Project as to possible impact of expected OCS activities in the Baltimore Canyon Trough off New Jersey. Following the briefings, the Committee heard from a series of panels representing government, industry, environmentalists, labor, business and technology. A total of 33 witnesses presented their views to the Committee over the course of these two days.

On July 25 and 26, 1975, further hearings were held in Ocean City, New Jersey, and Philadelphia, Pennsylvania as to expected OCS activity off the New Jersey coast. The Committee toured the New Jersey coastal areas to familiarize itself with these potentially impacted areas.

From August 2 to August 8, 1975, Committee members and staff conducted a series of field hearings and on-site oil and gas facility inspections in California and Alaska. The hearings held on August 2, in Los Angeles, California included testimony from the State's Governor and the City's mayor, in addition to representatives of industry, labor, consumer and environmental groups. On August 3, 1975, en route to San Francisco, the Committee Members and staff inspected offshore platforms and oil facilities in Santa Barbara, California, site of the 1969 oil spill. The hearings held on August 4, 1975 in San Francisco, concluded the California segment of the trip.

Hearings were then held on August 5, and August 6, 1975, in Yakutat and Cordova, Alaska respectively. Testimony was heard from government officials, including the Governor of Alaska, and local citizens and fishermen. On the morning of August 8, 1975, the Members and staff participated in a tour of an onshore gas processing facility in Kenai. That afternoon, concluding hearings were held in Anchorage, Alaska. Prior to returning to Washington, D.C., the Committee inspected drilling operations on the North Slope of Alaska at Prudhoe Bay.

Hearings were then held in New England to consider expected OCS activity in the Georges' Bank area. One day of hearings on September 12, 1975, was held in New London, Connecticut where numerous

(39) witnesses testified, including the Governors of Connecticut and Rhode Island. Prior to the hearings, the Committee attended a briefing session with Coast Guard, Interior Department and Environmental Protection Agency representatives. On September 13, 1975, the Committee heard testimony in Boston, Massachusetts from Members of Congress, the Governors of Massachusetts, New Hampshire and Maine, and numerous panels representing government, labor, industry and environmentalists.

The hearings held on September 26, 1975, in Ocean City, Maryland, as to expected OCS activity off Maryland and Delaware completed the Committee's scheduled field hearings and inspections of oil and gas facilities in potentially impacted areas.

During October, the Committee attended three days of briefings held in Washington, D.C., presented by the American Petroleum Institute on October 21, 1975, the Congressional Research Service of the Library of Congress on October 22, 1975, and by the American Association of Petroleum Geologists on October 24, 1975.

On November 13, 14, and 20, 1975, the final set of hearings was completed in Washington, D.C. The Committee then proceeded to analyze and coordinate the information gathered from the testimony of the over 300 witnesses.

On December 16, 1975, the Committee held its first mark-up session for the presentation and discussion of a new draft of H.R. 6218. During the month of January, numerous meetings with Members and staff liaisons, as well as many outside groups and organizations, were conducted.

Mark-up sessions of the Committee were held on February 25 and 26, 1976 at which time Majority and Minority counsel consecutively presented a summary and analysis consistent with differing drafts of H.R. 6218. Mark-up was continued on March 17, 18, 23, 24, 25, 30, and 31, 1976. Due to the high degree of participation and interest, over 190 amendments were submitted for consideration by Members of the Committee.

Final mark-up sessions were held on April 6 and 7, 1976, and on April 13, 1976, and H.R. 6218 was reported out of Committee.

V. NEED FOR H.R. 6218 .

On January 23, 1974, President Nixon announced that he had directed the Secretary of the Interior to increase the amount of acreage on the Outer Continental Shelf ("OCS") to be leased to private industry in 1975 to ten million acres.

In one year, the President proposed, the country was to lease an amount of offshore territory almost equal to the amount leased since the OCS program began in October, 1954. The proposal was part of an overall strategy to deal with the Nation's energy problems.

The authority for this proposal was the Outer Continental Shelf Lands Act, adopted in 1953. This Act provides for the jurisdiction of the United States over the submerged lands of Outer Continental Shelf and authorizes the Secretary of the Interior to lease these lands for oil and gas production.

The ten-million acre lease proposal crystalized growing concern on the part of many in Congress and elsewhere about the open-ended

authority granted in the 23-year-old legislation. The existing law gives little guidance to the Secretary of the Interior on how he is to go about leasing OCS lands.

The country's increased reliance on petroleum recovered from underneath the ocean, made more apparent by the temporary oil embargo from the Middle East beginning in the fall of 1973, had already triggered a number of examinations of the manner in which offshore resources were explored and recovered in this country. Some of these studies were underway at the time of President Nixon's dramatic proposal; others were triggered by it.

Examinations have been conducted recently by, among others, the Congressional Research Service of the Library of Congress, the National Science Foundation, the National Sea Grant College Program, the Congressional Office of Technology Assessment, the National Academy of Sciences and Engineering, and the National Aeronautics and Space Administration. These studies all pointed to either deficiencies in current methods of leasing offshore territory for oil and gas development, or the opportunity for improved methods of conducting the operation.

One such study, by the National Science Foundation in 1974, entitled "An Economic Analysis of Alternate OCS Petroleum Leasing Policies," found:

The historical background . . . documents the limited development of leasing policy over the past two decades in sharp contrast with the dramatic changes in economic conditions and social objectives. Specifically, past leasing strategies have not been changed in response to increased petroleum prices and development costs or to the increased geological uncertainty associated with greater reliance on and acceleration of leasing on the Outer Continental Shelf. In addition, society is considerably more conscious of environmental protection concerns than when leasing policy was established.

Congress responded by conducting its own research and by legislative action. In 1974, the Senate passed a comprehensive revision of the 1953 Act, but the action came too late in the session for the House to take up the matter.

Again in 1975, the Senate adopted an OCS Act, S. 521.

The House of Representatives also has responded. So as to avoid Committee jurisdictional disputes and thus avoid delays, the House established the first ad hoc committee, composed of members of several standing Committees, permitted under the new rules adopted by the 94th Congress. Speaker Carl Albert named Congressman John M. Murphy of New York to be Chairman of the Ad Hoc Select Committee on Outer Continental Shelf and charged the Committee with the responsibility of reporting to the House a revision of the original Act governing OCS operations.

The Ad Hoc Committee was convinced from the testimony of a variety of witnesses that the OCS Lands Act of 1953 had to be revised. For example, Senator Henry Jackson, Chairman of the Senate Interior Committee and chief sponsor of the Senate OCS legislation, testified before the Committee about the basic need for new legislation.

In discussing the "vitally needed changes in the Outer Continental Shelf Lands Act of 1953," Senator Jackson stated that this 1953 law

"did not provide clear policy guidance to govern [OCS] leasing. The bill has never been amended, though times and conditions have changed drastically in the intervening years. These developments [improved technology, decline of onshore production, increased importance of OCS resources, increased environmental and coastal awareness, new intergovernmental cooperation efforts, and accelerated lease schedules] emphasize the need for legislation that reflects the changes of the last twenty years and the growing importance of this great national resource."

Similarly, New Jersey Governor Brandon T. Bryant stated:

My basic message is simple: The current law governing the public oil and gas resources on the OCS is outmoded and it badly needs to be changed. The current law, enacted over two decades ago, has many serious flaws. [Among the deficiencies he cited were absence of a full return to the federal Treasury, absence of an incentive for rapid exploration, insufficient information for the public, lack of compensation for the coastal areas impacted by OCS operations, inadequate protection of the environment and insufficient voice for state and local authorities in OCS policy.]

In California, locus of the 1969 Santa Barbara oil spill, and one of the main sites included in the accelerated leasing program, Joe Bodovitz, Executive Director of the California Coastal Zone Conservation Commission, testified:

Several deficiencies in the present OCS leasing procedures under the Outer Continental Shelf Lands Act have contributed to the unhappy circumstance that in two months the Department of the Interior plans to make an irrevocable commitment to an indeterminate amount of oil and gas development offshore California, without having adequately assessed the extent to which such development will be consistent with coastal planning goals. [He identified three major deficiencies in the present system as inadequate information for federal and state governments on the offshore resources, the need to better control environmental impact and the need to insure that offshore leasing is conducted in a manner consistent with state coastal planning efforts.]

Finally, the hopes of citizens and local and state governmental officials for new laws were aptly reflected by Los Angeles Mayor Tom Bradley. Speaking for a group of municipal officials in California, and reflecting the feelings of many of his colleagues around the country, Los Angeles Mayor Tom Bradley told the Committee:

It is my hope that you will act quickly in the matter of reforming and amending the OCS Lands Act to bring it up to date, to bring it into the 1970's, instead of operating on a document that is certainly outdated . . . [The OCS Lands Act of 1953] was written at a time when oil was regarded as cheap and virtually unlimited. Enormous administrative power was centered in one man—the Secretary of the Interior—to maximize efficiency of resource development . . . Revision of the outdated Act is essential . . .

The original legislation providing essentially an open-ended grant of authority to the Secretary of the Interior to proceed with leasing on the Outer Continental Shelf, was based on what was, in 1954, an unproven technology, and on expectations that offshore production would be a relatively small supplement to the continued reliance on production from onshore fields.

This situation has changed dramatically. Now, according to U.S. Geological Survey estimates, fully one-third of the Nation's discoverable and producible oil reserves are offshore, as are 22 percent of our natural gas deposits. A Congressional Research Service report issued in April 1976 for the Committee declared that offshore production "can be the largest domestic source of oil and gas between now and the 1990's. The chances of finding large new fields on U.S. land are slim, except in Alaska."

It is today's reliance on Outer Continental Shelf resources—given conclusively demonstrated proof by the since-modified, but still accelerated, plan to lease millions of acres in the next few years—that has spurred the move to reform OCS procedures and to provide new protections.

The Committee found that the present law's grant of total discretion to the Secretary led to a situation where the petroleum industry had a too dominant voice in the setting of policy. As found, among others, by the study entitled "Energy Under the Oceans: A Technology Assessment of OCS Oil and Gas Operations", prepared by a group at the University of Oklahoma, headed by Professor Don E. Kash:

In the case of making and administering OCS policy, direct, continuous participation has been largely limited to the petroleum industry and government. Since government and industry have had almost identical policy objectives, policy has been made and administered with extraordinary ease . . . Within the Department itself, many of the Secretary's advisors are either recruited from industry or are persons who have spent a part of their careers in industry. At the operational level, detailed OCS orders regulating OCS development have been and are the product of a process of industry-government cooperation . . .

It is clear that the pattern of government-industry relationships which have been developed produced a very closed system for making and administering OCS policies. It is the closed character of this system which is being challenged at the present time.

This close industry-federal government cooperation has often disregarded the interests of state and local governments and the taxpayer.

State and local officials repeatedly testified that their dealings with the Department of the Interior were unsatisfactory. While many acknowledged improvements in the recent past, there was almost total unanimity that much more remained to be done to equip state and local officials with sufficient information to give them adequate time for assessment and to provide them with the opportunity they sought for a real role in offshore leasing policy decisions.

Governor Michael Dukakis of Massachusetts spoke for his colleagues when he told the Committee:

I think one thing at the outset is clear, and that is that our leasing laws are 22 years old. They were passed at a time when the very concept of frontier leasing was unknown and when oil and gas reserves beyond three miles were believed to be small. Obviously, the system needs changing; for what might have been valid for 1953 is not in 1975. Unfortunately, the efforts by the states to resolve this matter with the Department of the Interior have not been much more successful, Mr. Chairman, than those that you described on the part of your Committee [referring to requests the Committee made for a short delay in some lease sales].

Testimony from an impartial source on the inadequate role provided state and local governments was provided by the National Advisory Committee on Oceans and Atmosphere ("NACOA"), a Presidentially-appointed body composed of experts in marine and atmospheric science, business and research. The Chairman of the body, Dr. William J. Hargis, the head of a state-supported marine research laboratory, told the Committee:

State and local governments have had almost no role in the decisions leading to the accelerated leasing program for the Outer Continental Shelf with regard to both the timing and the location of the proposed development. NACOA supports the intent of H.R. 6218 to assure that coastal states are given the opportunity to participate in policy and planning decisions relating to management of the resources in the OCS. [Despite recent Department of the Interior attention to states] NACOA has clearly stated it feels that legislation is needed to clarify this point and, therefore, supports the general concept of legislation such as that you are considering.

The efforts on the part of the Interior Department to meet the demands of the states to be included in the OCS leasing process have been clearly inadequate. It was not until March 1974 that an advisory board, with designated state representatives, was established, and even then its function was restricted to overseeing offshore environmental monitoring programs.

Under continued pressure from states, and in response to the hearings of the Ad Hoc Committee, Interior finally, in October, 1975, set up an OCS Advisory Board with a limited policy role. The earlier body became the OCS Environmental Studies Advisory Committee and continues to work with the Department to obtain better and more comprehensive baseline studies and offshore environmental monitoring programs. In the opinion of the Committee, both of these steps, while welcome, were long overdue and still fall short of giving states and local communities the involvement they should have.

H.R. 6218 answers this need. First, it provides for establishment of Regional Advisory Boards. Any recommendations from these bodies, or Governors of affected states, must be accepted unless found not to be in the national interest.

Second, OCS lease holders must now supply the Secretary of the Interior with an exploration plan, before this activity may proceed, and with a development and production plan, before that activity may commence. While current regulations require similar documents, they do not provide the detail nor the opportunity for public review which the Committee believes is required and H.R. 6218 mandates.

Third, H.R. 6218 requires the publication of a five-year leasing program, providing the timing and location of proposed leases to reflect environmental considerations and with due regard for the likely impact on affected states. This plan is to be submitted to Regional Advisory Boards, states, local governments and, after opportunity for comment, to Congress.

This legislative response to the needs of the states is an example of the necessity for legislation. The Department of the Interior maintains it has sufficient legal authority now to implement any reforms. Yet, steps which have been taken by the Department have not been sufficient, and even then, have come only after considerable agitation.

It is the Committee's view, based on a review of the testimony of most witnesses, that the subject of OCS leasing is too important and the need for change too compelling to rely on piecemeal and tardy decisions of the current or some future administrator of the OCS leasing program in the Department of the Interior. It is essential that Congress set out, *in law*, public policy objectives and provide guidance to the Secretary of the Interior, based on the accumulated knowledge gathered since 1954, for implementation of such a vital component of the Nation's total energy program.

Another underlying concern of the Committee, which is reflected in various provisions of H.R. 6218, is that the present system provides too many advantages for industry at the possible expense of the taxpayer. Thus, the Committee authorized new leasing methods and required their use in an experimental manner.

The present front-end bonus system was often described in harsh terms by witnesses. David J. Bardine, Commissioner of the New Jersey Department of Environmental Protection, stated:

[The present system] is almost as bad as a legal system without policemen, without judges, without courts, without punishment. This is a giveaway program.

Barbara Heller, speaking for the Environmental Policy Center, stated:

The leasing and development program has been administered in a manner which local and state officials and the concerned public believe to be environmentally and economically irresponsible.

While the Committee does not necessarily endorse either of the above expressions, they are reflective of a deep concern on the part of many that the OCS program in the past has been too closed a procedure, in the words of the technology assessment conducted by Professor Kash and his colleagues and cited above.

The Committee originally had opposition to the current legislation from two sources, the Department of the Interior and the large petro-

leum companies. Their basic thesis was that the present law was adequate, providing sufficient leeway for changes, and that most of the objectives of such legislation as H.R. 6218 could be (or already was) accomplished by administrative action.

Yet, the present law, with its grant of almost total discretion to the Secretary of the Interior, has led to criticism by states, environmentalists, fishermen, tourists, smaller industry representatives, and others. This criticism has led to suspicions and opposition, often expressed in repeated law suits. It is the Committee's intent, through new legislation, to alleviate these suspicions and allow prompt, yet conscientious, exploitation.

The petroleum industry itself is aware of these suspicions. The chairman of the board of Humble Oil (Exxon) told a conference on offshore technology in 1969 that the industry's freedom of operations in the future "may well depend on our ability to convince the American public that we are capable of carrying out difficult, sophisticated technical operations deep in the ocean while maintaining the ability to conserve and protect the marine environment."

The Committee endorses this sentiment. The motivation behind, and the intent of, H.R. 6218 is to provide the public with this type of assurance, require a more open process in the leasing of the public's OCS lands to industry, and thus help dispell the doubts and suspicions, and avoid undirected and misdirected opposition and, often, legal challenge.

It is the conviction of the Committee, after its extensive examination of the OCS issue, that we can and should proceed with early exploration and development in an expanded offshore oil and gas program and that this can be done, provided adequate safeguards are provided, in an environmentally and socially responsible manner. In fact, the Committee generally agrees with a major finding in the Congressional Research Service study issued in April of this year, which states that offshore operations are less likely to place oil or gas in the ocean than importing a like amount of petroleum in tankers, since the latter are the major source of oil and gas in the world's oceans.

One witness gave eloquent expression to the Committee's underlying purpose in recommending passage of H.R. 6218 and to its belief in the manner in which the OCS program of the future should be conducted. James W. Brooks, Commissioner of the Alaska Department of Fish and Game, told the Committee:

I firmly believe we can have our petroleum and our healthy ecosystems too. But I just as firmly believe that we are a long way from achieving the safeguards we must to insure that the Alaska OCS experience is not a disastrous gamble. Yet, the safeguards are well within our reach if we can but shake off the hoary traditions of antique management decisions, if we can but require more of technology, if we can but rationalize the decision-making, and if we can but create a biological surveillance system with authority, integrity and expertise.

This statement is an apt summary of the purposes of H.R. 6218, and why the Nation needs the changes included in H.R. 6218 in the existing Outer Continental Shelf oil and gas program in order to accomplish these objectives.

VI. SECTION-BY-SECTION ANALYSIS

SHORT TITLE

This Act may be cited as the "Outer Continental Shelf Lands Act Amendments of 1976".

TITLE I—FINDINGS AND PURPOSES

Title I details the findings of Congress that led to enactment of the Outer Continental Shelf Lands Act Amendments of 1976 ("1976 Act") and the purposes of Congress in enacting the 1976 legislation.

Section 101.—Findings

As a result of its extensive hearings, the Committee set out in Section 101 a number of findings about the current and future supply of energy, the potential of resources of the Outer Continental Shelf ("OCS"), and the existence and solution of administrative, legal and environmental problems. Specifically, the findings are that the demand for energy in the United States is increasing and will continue to increase, while the domestic production of oil and gas has declined. This decline in production has made the United States increasingly dependent on imports to meet domestic demand, but this dependence on imported oil can be significantly reduced by increasing the development of domestic sources of energy. Similarly, natural gas consumption of the United States has greatly exceeded any increase in domestic reserves.

There is technology available to significantly increase domestic production of oil and gas in an environmentally safe manner. One source for increased domestic discovery and production of oil and gas is the Outer Continental Shelf (OCS). This vital national resource reserve must be carefully managed so as to obtain fair value for the resources, protect competition, preserve the environment, and generally reflect the public interest.

Development of the resources of the Outer Continental Shelf has, however, been delayed because of a number of technological, economic, environmental, administrative and legal problems. To resolve these problems, a review of environmental and safety regulations relating to activities on the Shelf must be undertaken in light of current technology and information. In addition, because the development and delivery of OCS resources and the placement of related energy facilities may cause adverse impacts on certain states, these states must be able to develop policies, plans and programs to anticipate and ameliorate any adverse impacts. Thus, they must be provided with timely access to information as to OCS activities, an opportunity to review and comment on policy decisions, and must receive from the federal government adequate financial assistance to allow them to plan for and ameliorate onshore impacts.

The federal government must also assume the responsibility for minimizing or eliminating conflicts between oil and gas development on the shelf and other uses of the marine environment, such as fish and shellfish harvesting and recreational activities.

Finally, the problem of the effects of oil spills must be dealt with. Funds must be made available to pay for the prompt removal of any

oil spill or discharge and for any damages suffered by any private or public entity as a result of the spill or discharge.

Section 102.—Purposes

The Outer Continental Shelf Lands Act of 1953 has given broad discretion to the federal government in exercising regulatory authority as to activities on the Outer Continental Shelf. New findings of Congress and the problems described in those findings, indicate a need to formalize many of these regulations in statutory provisions and to authorize and mandate the promulgation of additional regulations. The purpose of the Outer Continental Shelf Lands Act Amendments of 1976 ("1976 Act") is to establish such a legislative framework.:

Specifically, the 1976 Act is to establish policies and procedures for managing Outer Continental Shelf oil and natural gas resources so as to better achieve national economic and energy policy goals. Oil and natural gas resources in the Outer Continental Shelf are to be preserved, protected and developed so as to (1) allow the resources to become available for domestic use as rapidly as possible; (2) provide for a balance of development with protection of the environment; (3) insure the public a fair and equitable return on the resources; and (4) preserve and maintain competition.

Through new safety regulatory and enforcement procedures, the development of new and improved technology is to be encouraged so as not merely to reduce, but rather to minimize, and possibly eliminate, risks to the environment.

States impacted by OCS exploration and development are to be provided with comprehensive assistance to anticipate, plan for, and ameliorate any temporary or permanent adverse impacts, thus insuring adequate protection for the quality of life within such areas. Such assistance must include not only funds, but also timely access to information, an opportunity to participate in the formulation of policy and planning decisions, and an opportunity to actually review and comment on final decisions.

The 1976 Act is also to provide procedures to minimize, and hopefully eliminate, conflicts which may occur between those seeking to explore, develop and produce oil and natural gas and those seeking to recover other natural resources, such as fish and shellfish.

To protect public and private interests from the effects of a possible oil spill, the 1976 Act establishes an oil spill liability fund to pay for the prompt removal of oil spilled or discharged, and for any resultant damages.

Finally, in establishing a leasing program for the future, in specifically selecting sites for leasing, and in authorizing any public or private exploration, the federal government must insure prompt assessment of the total amount of oil and natural gas to be found on the shelf.

TITLE II—AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

This Title contains a series of amendments to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-43) ("OCS Act").

Section 201.—Definitions

This section amends section 2 of the OCS Act by modifying one term and adding definitions for thirteen new terms.

Subsection (a) changes the term "mineral lease", in the OCS Act, to "*lease*", so as to more properly describe the authorization for exploration, development and production of oil and gas or other minerals.

Subsection (b) adds new terms, including "*coastal zone*" and "*coastal state*", derived from the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*)

The subsection also defines "*affected state*." Throughout the Outer Continental Shelf Lands Act Amendments of 1976, states that are affected by any particular activity are given the opportunity to review, comment on, participate in, and make recommendations as to decisions relating to that activity. To determine those states the term, "affected state", has been defined. The term is not a general designation for all actions and decisions. Rather, it is a specific description related to a particular provision, plan, lease, or other activity. With respect to any activity, an affected state is (1) one whose civil and criminal laws, pursuant to Section 4(a) (2) of the OCS Act, are applicable to the area where the activity is conducted; (2) which is connected to an OCS structure; (3) which receives OCS oil and gas for processing, refining or transshipment; (4) which is designated by the Secretary of the Interior as having a substantial probability of being significantly impacted, damaged or changed; or (5) which is found by the Secretary of the Interior to bear a substantial risk of serious damage from an oil spill or blowout.

Specific definitions have been added for "*marine environment*" for conditions affecting the marine ecosystem; for "*coastal environment*" for conditions affecting the coastal zone ecosystem; and for "*human environment*" for conditions determining the quality of life of those areas affected directly or indirectly by OCS-related activities.

"*Governor*" is defined to include any person or entity designated by state law to exercise the powers granted to a Governor in either the 1953 OCS Act or in the 1976 Act.

Definitions have been included for "*exploration*" to include geophysical surveys and drilling, including drilling of delineation wells after a discovery; for "*development*" to include geophysical activity, drilling, platform construction, and the operation of onshore support facilities, after discovery of minerals; and for "*production*" to include removal of resources, transfer to shore, and work-over drilling. Although the Committee sought to define these terms to cover mutually exclusive sets of activities, the Committee recognizes that often they involve continuous and overlapping processes. The purpose of these definitions is to identify the point, after exploration and before development, beyond which activity under a lease cannot proceed without an approved development and production plan, as described in Section 25 of this Act.

A definition is included for "*anti-trust law*." Specific findings, purposes and policies are enumerated in the Act as to preservation of free enterprise competition. To carry out this goal, the 1976 Act asks the Attorney General and, in some instances, the Federal Trade Commission, to review and comment on a proposed leasing program, lease sales, lease extensions, or regulations, and requires the Secretary of the Interior to consult with the Attorney General in preparing portions of his annual report dealing with the promotion of competition. Review, comment, recommendations and reporting are to be based on evalua-

tions of activities in light of anti-trust laws. The definition of "anti-trust law" has been included to detail those statutes to be considered by the Attorney General and the Federal Trade Commission.

"Major federal action" is defined to refer, for purposes of application of the procedures under the National Environmental Policy Act of 1969 ("NEPA") to the term in NEPA "major federal actions significantly affecting the quality of the human environment" (Section 102(2)(c); 42 U.S.C. 4332(2)(c)).

Finally, subsection (b) also adds a new definition for "fair market value". In order to provide a framework for the distribution of oil and natural gas obtained as a royalty or net profit share, or purchased by the federal government, as described in Section 27, "fair market value", which is to be a basis for such distribution if there is no regulated price, is defined to be the averaging of the price computed according to existing sales, or if there are no sales, an appropriate price determined by the Secretary. This definition is similar to that for "market price" in OCS royalty oil regulations, presently used in the sale of such oil (30 CFR 225a.2(i)).

Section 202.—National Policy

Section 202 amends Section 3 of the OCS Act, originally a jurisdictional provision, and makes it into a declaration of national policy. The original provisions of Section 3, providing that the subsoil and seabed of the OCS belong to the United States and that all existing rights of navigation and fishing in OCS waters are to be continued, are restated.

In addition, policy statements are included to make it clear that in administering not only the Outer Continental Shelf Lands Act, but also any other act applicable, directly or indirectly, to activities on the Outer Continental Shelf, responsible federal officials must insure that activities on the shelf are undertaken in an orderly fashion, so as to safeguard the environment, maintain competition, and take into account impacts on affected states. These officials are also to consider the needs of affected states for information, participation and assistance so they can protect themselves from any temporary or permanent adverse affects of activities, and are to preserve the rights and responsibilities of all states to protect their environment through their own regulatory procedures.

Finally, responsible federal officials must insure that operations in the Outer Continental Shelf are safe. In making decisions as to the approval of exploration, development and production, and in assuring compliance with safety and environmental regulations, the officials are to require that activities and operations are conducted by well-trained personnel, and that such personnel use adequate techniques and precautions to prevent or minimize blowouts, loss of well control, fires, spills, interference with other users, and other possible damage.

Section 203.—Laws Applicable to the Outer Continental Shelf

Subsection (a) amends section 4(a)(1) of the OCS Act of 1953 by changing the term "fixed structures" to "structures permanently or temporarily attached to the seabed" and making other technical changes. It is thus made clear that federal law is to be applicable to all activities on all structure in contact with the seabed for explora-

tion, development, and production. The Committee intends that federal law is therefore to be applicable to activities on drilling ships, semi-submersible drilling rigs, and other watercraft, when they are connected to the seabed by drill-string, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. Ships and vessels are specifically not covered when they are being used for the purpose of transporting OCS mineral resources:

Establishment of Boundaries

Subsection (b) amends section 4(a) (2) of the OCS Act of 1953 so as to provide an updating of the laws of adjacent states applicable to OCS activities. Section 4(a) (2) provided that the President was to determine and publish in the *Federal Register* lines projecting seaward from the boundaries of states adjacent to the Outer Continental Shelf. With the exception of state taxation laws, and specific federal laws and regulations, the civil and criminal laws of such adjacent states "as of the effective date of [the OCS Act]" were declared to be a law of the United States as to activities on the Shelf. Because of the words "as of the effective date of this Act", any applicable civil and criminal law was to be, until recently, determined as of August 7, 1953.

The Deepwater Port Act, P.L. 93-627, 88 Stat. 2146, Section 19(f), amended this subsection to provide that whenever state laws applied to activities on the Outer Continental Shelf, the civil or criminal law in effect at the time of application was to be used.

The Committee agreed that the state criminal law, as applicable, should be those provisions in effect as of the date of application, but believed that a less stringent standard should be used as to state civil laws. Therefore, subsection (b) now provides that such criminal laws of the adjacent states shall be applicable as they are adopted, modified or amended by such states, but that the civil laws of such states shall be applicable as of the date of enactment of the 1976 Act, and then as updated with all changes, at the end of succeeding five-year periods.

In addition, in order to implement the original 1953 Act's intent that the President was to promptly publish the projected lines extending the boundaries for the application of state laws, the President is required to actually determine and publish such lines within one year after date of enactment of the 1976 Act and is to establish procedures, if necessary, for the settling of any disputes relating to the projection of such lines, prior to such a determination. These lines are not, in any way, true legal boundaries between states, but are rather only the base, for federal application within Federal lands, for a determination of applicable state law.

Finally, the President is now to be required, within one year of the date of enactment of the 1976 Act, to establish procedures for the settling of any outstanding international boundary disputes concerning the Outer Continental Shelf, including the determination of boundaries between the United States and Canada and between the United States and Mexico. Of course, if these procedures result in an international agreement, other requirements of law, such as the ratification by the Senate in the case of a treaty, must be followed. These "international boundaries" refer only to the submerged lands of the OCS and do not affect any territorial claims to the superadjacent waters.

Certain technical and conforming changes are made to other subsections of section 4, including the deletion of the original subsection 4(b), relating to the jurisdiction of the United States district courts. Language similar to this subsection has now been included as part of the new Section 23, which describes the procedures and jurisdiction related to court actions under this Act.

Safety Regulation and Enforcement

Subsection 4(e) is amended to provide that the Secretary of the Department in which the Coast Guard is operating is now required, rather than permitted as provided before, to mark for the protection of navigation any artificial island or structure which has not been suitably marked by the owner. Subsection 4(e)(2) and subsection 4(f), which provide that the Secretary of the Department in which the Coast Guard is operating shall promulgate and enforce reasonable regulations as to safety of life and property and that the Secretary of the Army is to continue to have the authority to prevent obstruction to navigation in navigable waters, is maintained. However, these sections must now be read in light of sections 21 and 22 added by the 1976 Act.

Section 21 provides that regulation as to the avoidance of navigational hazards are to be prepared by the Secretary of the Interior with the Secretary of the Army, or the Secretary of the Department in which the Coast Guard is operating, or both; and that regulations as to occupational safety and health are to be prepared by the Secretary of the Interior with the Secretary of Labor (through the Occupational Safety and Health Administration), or the Secretary of the Department in which the Coast Guard is operating, or both.

Section 22 directs the Secretary of the Interior and the Secretary of the Department in which the Coast Guard is operating to enforce safety and environmental regulations, and the Secretary of the Interior and the Secretary of Labor (through the Administrator of the Occupational Safety and Health Administration) to enforce occupational and public health regulations.

Section 4(e) and 4(f) provide authority for the Coast Guard and the Army to promulgate and enforce reasonable regulations. The actual promulgation and enforcement of such regulations are to be undertaken in a cooperative fashion by all those agencies named in Section 21 and section 22.

It is the intention of this Committee to provide that agencies which have developed expertise within their fields be given adequate authority and responsibility to apply their expertise in the development and enforcement of regulations.

As to the development and enforcement of regulations for the avoidance of navigational hazards, it is intended by the Committee that, insofar as existing regulations are adequate, or can be modified to be adequate, responsibility for the promulgation and later enforcement of such regulations should continue to be maintained by the Coast Guard and, where appropriate, the Army, in consultation with the Secretary of Interior.

However, as will be described in more detail in the discussion on Section 21, the Committee was dissatisfied with the regulatory machinery and enforcement as to workers' safety presently undertaken by the Interior Department and the Coast Guard, under the

present OCS Act. It is the Committee's intention and purpose to improve that machinery and enforcement by requiring participation of the Labor Department, through the Occupational Safety and Health Administration, in preparing regulations for employee safety, in enforcing employee safety regulations, and in investigating allegations as to employee safety violations, including requiring an inquiry into any serious injury or death.

The Committee is aware of the role of the United States Coast Guard in regard to vessel safety, including provisions to protect employees. The Coast Guard has developed a program beginning at the design stage and continuing through construction and exploration of a vessel. This program currently covers mobile drilling units and support vessels engaged in operations on the shelf. The Committee recognizes that these mobile drilling and vessels are not restricted to operations on the shelf but are commonly employed worldwide. Regulations to be promulgated and enforced under this Act would only apply to such vessels when they are actually drilling, and therefore attached to the seabed. In order to avoid conflicts and ambiguities, the Coast Guard is given joint responsibility for employee safety regulation and enforcement. The Committee expects the Coast Guard to work with OSHA and other responsible agencies so as to provide that drill ships or other mobile vessels would not only comply with Coast Guard regulations while traveling, but also comply with regulations under this Act when in the drilling mode.

Section 204.—Outer Continental Shelf Exploration and Development Administration

This section amends Section 5 of the Outer Continental Shelf Lands Act of 1953 by providing detailed requirements for the administration of leasing on the OCS.

Subsection (a) of Section 5 is now to provide that leasing be administered by the Secretary of the Interior, who is to promulgate all necessary regulations to carry out his leasing responsibilities. These regulations are to be applicable to any lease in effect at the date of promulgation, as well as to any lease to be let in the future. Of course, the present Constitutional requirement that any retrospective regulation be "reasonable" is applicable. Thus, any regulation must be in furtherance of the findings, purposes and policies of this Act.

As agencies other than the Interior Department are given responsibility for certain regulations and enforcement actions under new sections 21 and 22 added to the OCS Act, and as state governments are granted a larger role in all OSC decisions, this subsection stresses that the Secretary of the Interior is to cooperate with any relevant agency of the federal government and of an affected state in enforcing safety, environmental and conservation laws and regulations.

At each stage in the formulation and promulgation of regulations, the Secretary is to ask for and consider the views of the Attorney General as to any matter which may affect competition. Of course, any statement by the Attorney General is advisory only; it does not bind him in any future possible litigation or failure to litigate.

The original subsection (a) of subsection 5 of the OCS Act granted very broad authority, with few guidelines, to the Secretary to promulgate regulations. The amended subsection, while not limiting the

generality of the power granted to the Secretary to promulgate any appropriate regulation, does provide statutory guidelines and requirements for certain types of regulations.

The Secretary is to provide regulations for the suspension or temporary prohibition of operations or activities pursuant to a lease or permit in particular circumstances. Suspension can occur, if requested by the lessee, to further conservation, to insure proper development, and to allow for adequate transportation of resources. The intention of this paragraph is to provide that suspension and a concurrent extension of the five-year lease term may be granted, upon request of the lessee or permittee, so as to allow, for example, unitized exploration or development, common pipeline placement, or proper and safe delivery by tankers.

Suspension is also permitted without any request by, and even over the objection of, the lessee, if there is a threat of serious, irreparable or immediate harm or damage as a result of any operation or activity. Section 23 provides that the lessee can seek review of any such suspension through a proceeding in the United States district court.

As the reason for the suspension is usually through no fault of the lessee, any permit or lease affected by a suspension or temporary prohibition is to be extended for the period of such extension or prohibition. If, however, a suspension or prohibition is a result of gross negligence or willful violation of the terms of a lease or permit or of applicable regulations, no such extension shall be permitted.

Cancellation Provisions

The Secretary is also required to develop regulations for the cancellation of any lease or permit when continued activity would actually cause, not just threaten, serious harm or damage, and such harm or damage would not decrease over a reasonable period of time. It was the intention of the Committee that the Secretary would first suspend or temporarily prohibit activities when there is a potentiality of serious harm, and then, if it appears to the Secretary that continued activity would actually cause harm, and that the harm would be continuing for the indefinite future, he should cancel the lease. This provision in subsection (a) would ordinarily only apply to an environmental cancellation, without the fault of the lessee or permittee. Subsection (c) and (d) of this Section provides the procedures for cancellation or termination because of improper activities or non-compliance by a lessee or permittee.

An environmental cancellation of a lease or permit can only occur after a hearing, and the determination by the Secretary after that hearing would be subject to review in an appropriate district court, as provided in section 23(b).

An environmental cancellation does not foreclose any claim for compensation as required by the Constitution or any other law. The appropriate district court, as a trial-level court, would determine on a case-by-case basis whether the cancellation involved a "taking", and if so, what would be the just compensation for that taking. As the environmental cancellation provision is retrospective, it was the Committee's belief that the awarding of compensation would be more liberal for those leases issued prior to the date of enactment of the 1976 Act, as the lessee bid on a lease without notice of the possibility

of a faultless cancellation. However, it was the intention of the Committee that issues concerning the right to, and the amount of compensation, were more appropriately judicial ones, rather than legislative ones, and thus should not be specified within the OCS Act.

An environmental cancellation, permitted at any time, is to be distinguished from an automatic cancellation or termination of a lease for disapproval of a development and production plan, as provided in new section 25. Section 25 provides that if a development and production plan, submitted after a discovery of oil or natural gas, or both, cannot be modified to insure a safe operation because of exceptional circumstances, it is to be disapproved, the lease automatically deemed to be cancelled, and the lessee entitled to all amounts paid for the lease and all direct expenditures pursuant to the lease up to the cancellation.

As the disapproval is "deemed" to be a cancellation, there is no judicial review in the district court of that cancellation. However section 23(c) (2) does provide that the disapproval, and thus the automatic cancellation, could be challenged through administrative proceedings within the Department of the Interior, and then judicial review in an appropriate United States Court of Appeals.

Environmental cancellation because of disapproval of a development and production plan automatically entitles the lessee to all expenses, while cancellation at any other time might or might not entitle a lessee to compensation, as determined on a case-by-case basis by the courts.

Subsection (a) also specifically instructs the Secretary of the Interior to promulgate regulations for assignment or relinquishment of leases; unitization, pooling and drilling agreements; subsurface storage of oil and gas, drilling arrangements, and for the prompt and efficient exploration and development of a lease area. The Secretary is also instructed to prepare regulations to carry out specific sections of the Act, dealing with the different bidding systems, annual reports, safety regulations, leasing and development programs and plans, citizens suits, Regional Outer Continental Shelf Advisory Boards, and the sale of royalty, net profit share, or purchased oil and gas.

Subsection (b) makes it explicit that the issuance, extension, or continuance of any lease is conditioned upon compliance by the lessee with the regulations issued under the Act. They are to be considered part of the lease terms. Any regulation promulgated after the issuance of a lease, if reasonable, would have retrospective application.

Subsections (c) and (d) readopt into Section 5 former paragraphs (b) (1) and (b) (2), respectively.

Subsection (c) provides for the cancellation of any non-producing lease for failure to comply with the Act, the lease terms, or applicable regulations. The holder of such non-producing lease which is cancelled may secure *review* of that decision in the United States district court, as provided in Section 23(b).

Subsection (d) provides for cancellation of any producing lease for failure to comply with the Act, lease terms, or applicable regulations. Such a cancellation can only occur *after* a proceeding in the appropriate United States district court, as provided in Section 23(b).

It is the intention of the Committee that unlike a cancellation for environmental reasons, where the compensation is a question for the

court, a cancellation because of failure to comply with the Act, lease terms, or applicable regulations, would ordinarily preclude compensation to the lease holder.

Subsection (e) readopts former subsection (c) providing for rights of way for the transportation of minerals under appropriate regulations.

Rates of Production

Subsection (f) provides for application of provisions as to the rate of production of oil and gas on a lease. The Energy Policy and Conservation Act, P.L. 94-163, 89 Stat. 871, Section 106, 42 U.S.C. 6214, allows the President to require crude oil and mineral gas or both to be produced from fields on federal land, including the Outer Continental Shelf, at maximum efficient rates of production, and at temporary emergency production rates during a severe energy supply interruption. Paragraph (1) of subsection (f) provides that if any such rule or order is issued by the President, under the Energy Policy and Conservation Act, or any other provision of law, the lessee is to produce at rates consistent with such rule or order. Paragraph (2), however, provides that if no rule or order is established by the President, the Secretary is to promulgate regulations to insure the maximum rate of production which is efficient and safe, and that the lessee is to produce oil or gas, or both, at rates consistent with any such regulation. The Secretary is granted the discretion, after such rate is established, to permit variances when necessary. The question of efficiency as an element of the rate or rates to be set would include economic and technological factors. Industry would have the right to comment on any proposed regulations, as would any other interested citizen, prior to the promulgation of a final and effective regulation.

Subsection (g) provides that after the date of enactment of the 1976 Act, no lessee can flare natural gas from any well, unless the Secretary of the Interior makes a specific finding that such a prohibition is not practicable. Practicable includes economic and efficiency considerations. Section 501 of the 1976 Act requires an annual report as to any wells that the Secretary permits to flare natural gas.

Section 205.—Revision of Bidding and Lease Administration

Section 205 amends section 8 of the OCS Lands Act by providing new bidding options and procedures.

The original OCS Lands Act of 1953 provided that leases were to be awarded to the highest responsible qualified bidder, through competitive and sealed bidding procedures on the basis of a cash bonus, with a fixed royalty of no less than 12½ percentum, or on the basis of a royalty, at no less than 12½ percentum, and a fixed bonus. Subsection (a) of Section 8 is amended to still require competitive, sealed bidding procedures and to still authorize bonus and royalty bids, but now also to authorize six new bidding systems: (1) a fixed cash bonus bid with a diminishing or sliding royalty; (2), a cash bonus bid with a fixed share of the net profits of not less than 30 percentum; (3), a net profit share bid with a fixed cash bonus; (4), a cash bonus bid with a fixed royalty with no less than 12½ percentum and a fixed net profit share of no less than 30 percentum;

(5), a cash bonus bid with a fixed net profit share, for a percentage share of a lease area, and (6), a cash bonus bid with a fixed or diminishing royalty, for a percentage share of a lease area.

Detailed procedures are also included in this subsection for the quantification of bids and the holding of lease sales using the various systems.

Several options provide for minimum royalties and net profit share. It might become uneconomic during later phases of production to exploit resources because of these minimums. Therefore, in paragraph (3) of the subsection, the Secretary is given the authority, after production has commenced, to reduce or eliminate any royalty or net profit share so as to encourage complete exploitation of the resources in a lease area.

One problem of the present front-end bonus system is the need for a potential lessee to secure large amounts of capital for the payment of the front-end bonus immediately after a winning bid is accepted. Paragraph (2) of subsection (a) would permit the Secretary to possibly alleviate this problem by announcing prior to a lease sale that a cash bonus may be paid in installments according to a schedule over a period up to five years or up to the commencement of development and production, whichever occurs first.

While there are uniform accounting procedures and standards to determine profits for an industry, or a company, in general, or from a particular activity, what is exactly "net profits" is often unclear. A bidder in a lease sale, involving one of the systems involving a fixed or a variable net profit share, should know what that term means prior to submitting his bid. Therefore, paragraph (4) of subsection (a) provides that the Secretary shall, in a regulation issued at least 90 days prior to a lease sale involving a net profit share, establish rules to govern the calculation of net profits. As the potential lessee would know prior to entering his bid how net profits are to be calculated, if there is any dispute as to the actual calculation of net profits once production has commenced and profits accrue, the burden of proof is to be on the lessee. In attributing profits as between oil and gas, costs are to be allocated proportionately to the value of the respective amounts of oil and gas produced.

Phillips Plan Provision

Subsection (a) provides for two percentage leasing systems, one with a fixed net profit share and the other with a fixed or diminishing royalty. This system, suggested to the Committee by the Phillips Petroleum Company (and commonly called the "Phillips Plan"), provides an opportunity for a number of companies to secure undivided working interests in a lease area and then proceed to jointly explore and develop that lease area.

It is expected that this system will allow smaller energy companies, and other companies not presently involved in OCS leasing, to participate. A company would bid for a certain percentage, in its discretion, of a lease area at a certain price. The highest responsible qualified bidders, up to 100 percent of the lease area, would be awarded their percentages. In general, the Secretary of the Interior is to establish standards and procedures for the formation of a joint working group consisting of all the successful bidders on the percentage leasing system,

and is to be considered a non-voting party to any such group. Specifically, the Secretary is to approve the operator or operators for the joint working group in a lease area and the terms of management of activities in that lease area.

The Committee recognized three problems that might occur in utilizing the percentage leasing system. As bidding under the system goes to the highest bidders for each one percentage share, the different successful bidders could have paid different amounts for each one percentage share. Their interests and incentives would, therefore, be different, depending on whether or not their bid was higher or lower than the average successful one. To avoid these problems, paragraph (5) (A) provides that the Secretary of the Interior is to average out the price per one percentage share of each of the successful bidders. This average price would be the price actually to be paid by such successful bidders. If an individual whose bid is less than the average decides not to pay the additional amounts required, he is to receive back his deposit and his rights and obligations are terminated. It is expected, however, that any individual who bids below the average share, noting the fact that other companies bid above the average share, would most likely agree to pay the additional amounts.

There is, of course, the possibility, either at the time of the initial lease sale, or through the refusal of bidders below the average to pay the additional amounts, that 100 percent of a lease area would not actually be bid. Paragraph (5) (B) provides the procedure in such a situation. The additional shares not bid would be offered to the successful bidders. If, even after this procedure, all the shares are not sold, the Secretary shall offer any remaining shares to the highest interested bidder whose bid was not accepted at the initial bidding process. He may purchase a number of shares up to the number for which he originally bid. As with all other one percentage shares, any additional shares are to be sold pursuant to the price averaging procedures.

Under any bidding system authorized by this section, a bid might be the highest and still not be sufficient in the opinion of the Secretary of the Interior to provide fair return to the United States for its OCS resources. In such a situation, as is the present law, the Secretary may refuse to award the lease to such highest bidder. The Committee was concerned that the same problem might occur after the averaging out of the price of the percentage shares, the possible elimination of some of the lower bidders, or the offering of remaining shares to a smaller number of bidders, under the percentage leasing system. Paragraph (5) (C) of this subsection therefore makes it explicit that the Secretary, through regulations, is to provide that a lease sale using the percentage leasing system is to be cancelled if the total amount paid for all shares does not represent a fair return to the government.

Purposes of Alternate Lease Systems

The purpose of allowing use of all these new bidding options is to determine what system, and in what situations, provides the best means to lease our federal resources on the Outer Continental Shelf. Some witnesses before the Committee indicated that the high front-end bonus bids may have created a barrier to the entry of small and medium-size oil firms, as well as other potential explorers, to the OCS activity, and that these types of bids do not, after the completion of exploitation of a lease area, provide a fair return to the government.

Others, including representatives from the Interior Department and some of the oil companies, indicated their satisfaction with the present front-end bonus system in that it provides for rapid exploration and recovery of resources and has worked so as to provide maximum revenue with no risk to government, and with ample opportunity for all to participate.

Subsection (a) contains several means to determine and resolve this dispute. First, standards to be applied by the Secretary in selecting bidding alternatives are provided. The standards include providing fair return to the federal government, increasing competition, insuring safe operations, avoiding undue speculation, avoiding unnecessary delays in exploitation, discovering and developing resources in an efficient and timely manner, and limiting administrative burdens on both government and industry.

Second, to secure as much information as possible as to the effect and value of alternative leasing systems, the Secretary is permitted to require bids to be submitted under more than one bidding system. The successful bid would be statistically or randomly selected so as to avoid the possibility of false bids being submitted. Authorizing selection of a bid in a random manner, for statistical purposes, would avoid a challenge of such selection as being arbitrary and capricious.

Third, the Secretary is authorized to require each bidder to submit bids in accordance with more than one bidding alternative, and then is authorized to select the bid that best satisfies the standards to be applied. Unlike the first multiple bid procedure, which is to be for statistical purposes, this multiple bid procedure would be to obtain the best bid.

Fourth, the Secretary would have to use in at least ten percent of the total area offered for lease each year during the next five years, in frontier areas, one of the new bidding systems. This provision is to assure that the new leasing systems would be tried. There is a very limited "escape hatch." If in any year, the Secretary can demonstrate to the satisfaction of Congress that using new systems in ten percent of the lease areas offered would unduly delay efficient development, result in less than a fair return to the government, or reduce competition, he could utilize less than ten percent. The satisfaction of Congress would have to be expressed by a resolution of approval passed by *both* the Senate and the House within thirty days. It was the intention of the Committee by this limited exception to strengthen the mandate given to the Secretary to require him to use bidding systems other than the cash bonus bid.

Finally, the Secretary is to annually report to Congress as to his use of the various bidding options. In addition to listing all previous and anticipated lease sales, he is to evaluate the benefits and costs associated with conducting lease sales using the various systems, to explain why any particular bidding system is not or will not be used, to explain if bidding systems other than the front-end and cash bonus bid were not *actually* used in areas *actually* leased, and to analyze the capability of each bidding system to accomplish the standards for bidding.

Joint Bidding Restrictions

While there is no provision in the OCS Act of 1953 as to limiting joint bidding, the Secretary has prohibited, by regulation, any joint

bid, where more than one of the joint bidders controls, directly or indirectly, an average daily production of 1.6 million barrels or more of oil or its equivalent. The recently enacted Energy Policy and Conservation Act, P.L. 94-163, 89 Stat. 871, 42 U.S.C. 6213, requires the Secretary of the Interior to preclude joint bids on OCS leases when more than one of the joint bidders is chargeable with production of 1.6 million barrels, or more, of crude oil or its equivalent, per day. However, the Energy Policy and Conservation Act allowed the Secretary of the Interior to exempt any joint bidding prohibition for leases in frontier high risk, or high cost areas.

Most future Outer Continental Shelf activities will be in frontier areas. Moreover, the more risk in the lease area as to finding resources, the lower, rather than higher, the bid would be, and thus the less, rather than more, there will be a need for capital from more than one large company. The Committee was concerned that the Energy Policy and Conservation Act might be construed, improperly, in light of the intention of Congress, to eliminate the present prohibition of joint bids in appropriate circumstances. To clarify and enact into positive law the intent of the Committee, paragraph 7 of subsection (a) provides that the Secretary is to establish regulations permitting joint bids in appropriate circumstances. The regulations, however, *cannot* allow joint bids where more than one of the joint bidders controls directly or indirectly an average daily production of 1.6 million barrels a day in crude oil or its equivalent. To encourage competition, a larger company is permitted to combine with any number of smaller companies, but is to be precluded from combining with another large oil company in bidding on a lease. What is a large company, for these purposes, is left to the discretion of the Secretary. The Secretary has recently adopted the 1.6 million barrel per day standard, and the value of this standard in promoting competition has not been adequately tested. Thus, the Committee set this figure as to the maximum amount to be used to determine what is a large company. However, as more information is obtained, the Secretary is given the discretion to set a lower barrel per day standard, by regulation.

Because percentage leasing systems involve companies actually exploring, developing and producing together, paragraph (7) almost totally precludes any joint bid for a percentage share. However, there may be cases where silent economic partners wish to bid, but do not wish to participate in any decisions. The addition of their capital may increase competition in the bidding of percentage shares. Therefore, the Secretary may permit joint bidding in a percentage leasing when he specifically finds it necessary to promote competition.

Lease Size Limitation Lifted

Subsection (b) of the amended Section 8 provides for the terms of a lease. Under the original OCS Lands Act of 1953, a lease was to be for 5,760 acres. However, the Committee learned in its testimony that acquiring leases for that amount of acreage might lead to inefficient exploration and development, and possible administrative burdens to both the government and potential lessees. Ideally, structures or geological traps containing reserves of oil and natural gas should be explored, developed and produced as an entity, thus providing the most efficient exploitation. However such structures or traps might

be so large that only a few companies would be able to afford to bid and develop such leases, and thus, competition would be minimized. Finally, leasing of overly-large areas might avoid more than one exploration strategy, and thus preclude discovery and the efficient development of resources. To resolve these problems, paragraph (1) of subsection (b) eliminates the 5,760 acre limitation and provides that a lease can cover any area designated by the Secretary, whether on the basis of the entire geological structure or trap, or on the basis of a reasonable economic production unit.

The present OCS Lands Act provides that a lease is for a period of five years, and then as long thereafter as there is production or approved drilling operations. Concern was raised at the hearings of the Committee that in some areas of unusually deep water or adverse weather conditions it might not be possible to complete exploration, even if the lessee was duly diligent, within the five-year period. On the other hand, it was feared that providing for ten-year leases might discourage prompt exploration activities. Paragraph 2 of subsection (b) provides that a lease is to be for five years, and may be extended for five additional years, if necessary to encourage exploration and development in areas of unusually deep water or adverse weather conditions. As in the original provision, a lease or extension is to continue beyond the five-year period or periods, as long as oil and gas is produced or approved drilling operations are conducted. To assure expeditious and proper exploration, no five-year extension can be granted if the Secretary finds that the lessee has not been duly diligent in his exploration activities during his five-year lease term. Thus, if a lessee is acting expeditiously in an area, but because of climatic conditions or extreme water depths, he cannot complete his exploration, he will ordinarily receive an extension. If, however, he is found to not be diligently exploring, no extension would be permitted.

Certain other specific provisions are required to be included in any lease. A lease is to provide that the lessee pay the value as determined by the bidding system utilized in the sale of his lease; to provide that the Secretary of the Interior can require increased production under certain circumstances; to entitle the lessee to exploit the resources in his lease area; to provide that the Secretary may suspend or cancel the lease in circumstances described by regulations issued pursuant to this Act; to require that the lessee exploit the resources in his lease area with due diligence and in accordance with the development and production plan approved by the Secretary of the Interior; and to provide for payments of rentals. In addition, other provisions may be included in a lease prescribed by the Secretary at the time of offering the area for lease.

Anti-trust Review

Subsection (c) of the amended Section 8 is designed to insure that the issuance or five-year extension of a lease is not anti-competitive. The Attorney General and the Federal Trade Commission are to indicate to the Secretary of the Interior what type of information they need in order to determine whether a lease or extension would be anti-competitive. Thereafter, the Attorney General and the Federal Trade Commission are to receive specific notice, in the terms agreed upon,

from the Secretary of the Interior prior to issuance of a lease or the granting of a five-year extension. The Attorney General and the Federal Trade Commission have thirty days to review this notice and take whatever action one or the other, or both, determine to be appropriate to insure free enterprise competition. The lease can only be issued or extended at the conclusion of that thirty-day period. Failure to act within the thirty days does not provide any type of immunity or defense to a later civil or criminal suit under the antitrust law.

Due Diligence Requirements

Subsection (d) requires that the Secretary of the Interior make a finding that any lessee, about to be awarded a lease, or applying for an extension of a lease, is complying with all the due diligence requirements on all leases currently in his possession. Unless such a finding is made, no extension or new lease may be granted.

The purpose of this subsection, and the purpose of the earlier provision in subsection (b) (2), requiring due diligence to be demonstrated on a lease in order to get an extension, is to supplement those subsections dealing with cancellation of a lease for failure to comply with applicable regulations, such as those providing for rates of production. No company should be able to withhold resources from the Outer Continental Shelf by improperly shutting in wells or delaying exploration or production. If a lessee acts in conformance with an exploration plan or development plan, as defined by regulation, and approved by the Secretary, he is, of course, acting with due diligence and would not be deprived of a lease or extension.

It is intended that the prohibition on the granting of a lease or an extension because of lack of due diligence on other leases would be in effect only so long as the company continues in violation of due diligence requirements. Thus, any potential lessee is not disqualified from participation unless his own current actions indicate that he is unwilling or unable to abide by the provisions of this Act, appropriate regulations, and appropriate lease terms, which describe due diligence.

Federal-State Joint Leasing

Subsection (f) is intended to establish a procedure for the orderly and efficient leasing and development of Outer Continental Shelf lands contiguous with state tidelands. While the issue of jurisdiction over offshore lands has been resolved by the United States Supreme Court in *United States v. Maine*, 420 U.S. 515, 95 S. Ct. 1155 (1975), the problem of drainage of state resources by a lessee operating on the Outer Continental Shelf has not been so resolved.

Subsection (f) provides that, at the same time he solicits nominations for the leasing of lands within three miles of the seaward boundary of the coastal state, the Secretary is to notify the Governor of that coastal state of the areas to be offered for leasing, characteristics of the region, the best estimate of the amount of reserves in the areas proposed for leasing, and the existence of any fields or geological structures or traps in that area, but that overlap state tidelands.

If the Secretary of the Interior believes that an area nominated for leasing contains a field, structure or trap which may be located both within federal and state-owned lands, he is to offer the Governor of the appropriate coastal state the opportunity to jointly lease the area.

The Governor then has ninety days to determine whether he wishes to participate. If the Governor declines the offer, the Secretary may lease the federally-owned portion of the area. If the Governor accepts the offer, the Secretary and the Governor are to meet to work out mutually accepted terms of a lease. As this is a lease authorized under the OCS Act, it, of course, must be consistent with the provisions of the Act and applicable regulations. Additional terms may be included in the lease so as to comply with state law, so long as they cannot reasonably be said to be inconsistent with federal law. If mutually acceptable terms of a lease are agreed upon by the Secretary and the Governor, they are to jointly offer such area for lease. If, after a reasonable period of time, such mutually acceptable terms are not able to be agreed upon, the Secretary of the Interior may lease the federally-owned portion of the area.

This joint lease procedure does not introduce arbitrary delays. The natural time-lags which exist between the calling for nominations, the receipt of nominations, and the acceptance of bids, are utilized as the period for information to be supplied to the state, an offer to be made by the Secretary of the Interior to the state, and mutually acceptable terms to be negotiated.

The subsection specifically provides, and the Committee explicitly intends, that the Secretary supply the Governor of a coastal state whose tidelands are adjacent to the OCS, with "all information," including interpretations, about the characteristics of the adjacent zone if there is a potentiality of a joint lease. This information should be made available to the Governor promptly after receipt by the Secretary.

The Committee recognized a seeming inconsistency between the mandate of this subsection and the requirement in subsections (c) and (e) of Section 26, that regulations be promulgated by the Secretary prohibiting the release of any confidential or privileged information to anyone, including a Governor, prior to a lease sale, unless the private supplier consents. It is the Committee's intention that these provisions be interpreted and applied so as to be consistent. Regulations, as to confidentiality, to be prepared pursuant to Section 26, should require that the Secretary make a preliminary determination, as promptly as possible and certainly no later than immediately after soliciting nominations for an area, as to whether a proposed federal lease area contains a field or geological structure or trap that extends into state tidelands. Only if the existence of such a common formation is so determined, all information, including otherwise confidential or privileged data, is to be made accessible or supplied to the Governor or his designated representative. Knowledge so obtained would be subject, under Section 26, to applicable federal confidentiality provisions. Individuals securing permits, or other authorization, to conduct pre-lease studies would, through these regulations, be aware of this limited exception to pre-lease confidentiality requirements. Thus, a Governor, as a potential joint lessor, would have the same information available as the federal government, and private survey and exploration firms would be assured of confidentiality.

If there is no joint lease, or if a joint lease does not contain a term specifically dividing proceeds from a lease, all federal revenues from the federal lease are to be placed in an escrow account until the Sec-

retary of the Interior and the Governor of the coastal state determine the proper rate of payments to be deposited in their respective treasuries, based on geological or other information. If, after a reasonable period of time after production has commenced, the Secretary and the Governor are not able to make such a determination, either would have the right under Section 23 (b) to take the controversy as to the rights to natural resources to the appropriate district court.

Section 206.—Outer Continental Shelf Oil and Gas Exploration

Section 206 amends Section 11 of the OCS Act, providing for the procedures for exploration of areas on the Outer Continental Shelf.

Under the original Outer Continental Shelf Lands Act of 1953, any agency of the United States and any person authorized by the Secretary could conduct geological and geophysical explorations. The Department of the Interior has indicated that this provision grants it clear authority to allow any type of exploration, before a lease sale or after a lease sale, including private exploration, or public exploration, directly or by contract. The Committee decided not to alter this broad grant of authority nor to indicate a preference for one exploration strategy over another, except for requiring applicants to be sought for an on-structure stratigraphic drilling test, described in subsection (g). Therefore, it readopted, in subsection (a) (1), substantially the original language by providing that any agency or person whom the Secretary authorizes by permit or through regulation may conduct geological and geophysical exploration in the Outer Continental Shelf, provided such explorations do not interfere with operations in any leased area, and are not unduly harmful to the marine environment.

The Committee recognized that the Secretary of the Interior has not authorized government exploration on OCS lands, either by his own employees or by contracted service personnel. However, it believed, based on the testimony of the Interior Department, that this Section would allow the present Secretary, or any future Secretary, to conduct or authorize such exploration activities as he deemed proper.

Section 11 adds a requirement for all holders of leases issued or maintained under this Act to submit an exploration plan to the Secretary for approval prior to exploring a leased area. Such plan may apply to more than one lease held by a lessee in a region or to more than one lessee, where there is a unification, pooling or drilling agreement. Any lessee conducting activities on their own leased area must do so in accordance with an approved exploration plan and is exempted from the permit or regulatory authorization procedures and limitations of subsection (a) (1). However, the Secretary is given the authority to require a lessee, by regulation, to obtain a permit before drilling any well, despite having approved the exploration plan.

Subsection (c) describes the contents of an exploration plan and the procedures for approval or modification of that plan. An exploration plan is to include (1) a schedule of anticipated activities; (2) a description of equipment to be used; (3) the general location of each well to be drilled; and (4) other information deemed pertinent by the Secretary. In addition, the Secretary can, by regulation, require a lessee to submit a statement as to his development and production intentions. Such statement shall be for planning purposes only, and shall not be binding on any party.

After submission of the plan, the Secretary has thirty days to act upon it. If he finds it consistent with the law, regulations, and the lease, he may approve it. If he finds modifications are necessary to achieve such consistency, he is to require such modifications. If he believes the plan, even if modified, would not insure safe operations, he can delay action upon the plan and suspend activities, but only pursuant to and under the circumstances permitted by regulations provided for such environmental suspensions pursuant to Section 5(a) (1) of the OCS Act.

After submission and approval of his plan, the lessee may request revisions, which would then be subject to the same approval procedures as his original plan.

The requirement of approval of a plan prior to any exploration applies to all leases issued prior to and after the date of enactment of the 1976 Act. However, the requirement does not go into effect until ninety days after enactment of the 1976 Act, thus allowing present lessees to continue operations, submit plans, and require approvals without any delay in activity. In addition, under subsection 11(f), in that same ninety-day period the Secretary may review existing plans on leases which have already secured approval under current regulations, and approve them if they are in substantial compliance with the requirements for exploration plans in this section.

Pre-Lease Exploratory Drilling

Subsection (g) requires the Secretary of the Interior to secure applicants to conduct geological exploration drilling, prior to a lease sale, at least once in each frontier area. The Secretary should select drilling locations with the highest potential of containing significant oil and gas. Such drilling would be done only on the basis of voluntary participation by industry without cost to the federal government.

The pre-lease exploratory drilling program contemplated by this subsection is patterned after the existing Continental Offshore Stratigraphic Test ("COST") program. Under that program, the Interior Department has granted permits to consortiums of oil companies to drill deep stratigraphic test wells in frontier areas prior to leasing. Participating companies and the Interior Department have the exclusive right to information obtained from the testing.

Permits have been granted for COST drilling in the Gulf of Mexico, Southern California and Gulf of Alaska, as well as the Baltimore Canyon Trough and Georges Banks regions of the Atlantic OCS. The program has met with widespread industry support and acceptance, as evidenced by the fact that thirty-one oil companies shared the estimated \$9 million cost of drilling the Baltimore Canyon Trough-test well.

However, the Interior Department has followed a policy of allowing COST drilling only in locations where there is the lowest possibility of detecting the presence of oil and gas (off-structure). In contrast, subsection (g) now requires the Secretary to make all reasonable efforts to have such drilling take place at least once in every frontier area in areas which have "the greatest likelihood of containing significant oil and gas accumulations" (on-structure).

By providing geological information about the proposed lease area prior to leasing, this program would increase the probability that the public will receive a fair return for the sale of its resources, and decrease the likelihood that industry will expend large sums of bonus bids for lands which turn out to be valueless.

In addition, the program would facilitate entry into OCS activity by smaller, independent oil and gas producers who often presently cannot reasonably assume the risks involved in bonus bidding—paying large cash sums in advance, with no assurance of recovery of oil or gas. By providing all bidders participating in the test with sufficient information to make bids which more accurately reflect the value of the tracts to be purchased, this program might lessen some of this risk.

Section 207.—Annual Report

Section 207 amends section 15 of the Outer Continental Shelf Lands Act to require the Secretary of the Interior to submit an annual report in two parts within six months of the end of each fiscal year.

Part 1 of the annual report would describe the OCS leasing and production program, including an accounting of all monies, and all activities, a summary of management, supervision and enforcement activities, a list of shut-in and flaring wells, and recommendations to Congress for improvements in management, safety, amount of production, and resolution of any jurisdictional conflicts.

Part 2 of the report, to be prepared after consultation with the Attorney General, is to describe programs and plans for the promotion of competition. The report is to include recommendations and findings by the Attorney General, and which are to be considered advisory only and not binding as to any future action or inaction, and plans for implementing recommended administrative changes or proposals for new legislation. It is to contain an evaluation of the various bidding systems, an explanation for the failure to use any new bidding system, an evaluation of any other bidding system not authorized by the 1976 Act, an evaluation of the effectiveness of joint bidding limitations, an evaluation of other measures to encourage entry of new competitors, and an evaluation of measures to increase the supply of oil and gas to independent refiners and distributors.

Section 208.—New Sections of the Outer Continental Shelf Lands Act

Section 208 adds eleven new sections to the Outer Continental Shelf Lands Act.

Section 18.—Leasing Programs

Section 18 establishes procedures which require the Secretary of the Interior to weigh environmental and other risks against energy potential and other benefits in determining how, when and where oil and gas should be made available from the various Outer Continental Shelf areas to meet national energy needs.

Subsection (a) requires the Secretary of the Interior to prepare, approve, and maintain a five-year leasing program, to review it at least every year, and to revise and reapprove it as appropriate.

The purpose of any program, revision, or reapproval are to implement the policies, purposes and findings of the Act and to indicate

the size, timing and location of leasing activities for each five-year period following approval or later reapproval.

Management of the program is to be balanced, considering all the economic, social, and environmental impacts of oil and gas activities. In determining the timing and location of activities in the various geographic regions, the leasing program should consider the existing characteristics of such regions, the need to share developmental benefits and risks among the various regions, the location of these regions with respect to the needs of the various regional markets, the locations of the regions with respect to other uses of sea and seabed, the interest of developers in a particular area, the laws, goals, and policies, such as zoning or land use, of affected states, the policies and plans of coastal states promulgated pursuant to the Coastal Zone Management Act, recommendations and advice given by any Regional Outer Continental Shelf Advisory Board, and the availability of sufficient equipment and capital to allow expeditious exploration and development. The securing of information to allow evaluation of these factors will not necessarily involve additional record-keeping by either private persons or the government. Later subsections provide that the Secretary can purchase from private sources and obtain from public sources, including federal departments and agencies, any information necessary for use in preparing and revising a program.

Selection and timing of leasing areas should, to the maximum extent possible, maintain a proper balance between the potential of environmental damage, resource discovery, and onshore adverse impact. Finally, leasing activities, including the schedule of lease sales and the amount to be included in the lease sales, should assure receipt to the government of fair market value for our public resources.

Subsection 18(b) requires that the Secretary estimate and include in the program the appropriations and staff required to obtain, analyze, and interpret information; conduct baseline studies and prepare any necessary environmental impact statements (as for example prior to a lease sale); and supervise activities so as to assure due diligence and compliance with this Act, regulations, and the terms of the lease. As the purpose of these estimates is to provide information to the Congress, the states, and the public, the Committee intends that these estimates represent the Secretary's best judgment of actual costs rather than a view as to what are appropriate funding levels in a budget.

Subsection 18(c) provides for submission, review and promulgation of the leasing program. No later than nine months after the date of enactment of the 1976 Act, the Secretary is to submit a proposed leasing program to the Congress and to the Attorney General, and is also to publish it in the *Federal Register*. The Attorney General, within ninety days after the date of publication, is to submit comments on the anticipated effects of such program on competition. Such comments, of course, do not bind him to any future action or inaction, but are advisory only. In addition, any state, local government, Regional Outer Continental Shelf Advisory Board, or other person, including environmental organizations or Members of Congress, can submit recommendations and comments as to any aspect of the program.

This submission for and receipt of formal comments and recommendations does not, in any way, alleviate the responsibility of the Secretary to consult with state and local governments, Advisory Boards, and other interested persons, prior to the formulation of a draft program. After this ninety-day period, the Secretary is to submit to Congress and the President his final leasing program, together with any comments received when he submitted his earlier proposal for review. At the time of the submission of the Secretary's final program, the Secretary is to indicate why any specific recommendation by the Attorney General, or a state or local government, or a Regional Advisory Board, has not been accepted. The program does not become effective until sixty days after this submission.

It is intended by the Committee that reasonable recommendations by the Attorney General, or by a state or local government, or a Regional Advisory Board, are to be accepted. If, however, the Secretary has valid reasons not to accept them, he may reject the request by explaining those reasons, subject, of course, to Congressional oversight and judicial review.

Congressional oversight is, of course, always involved in the activities of any federal government agency. Here, specific information is to be supplied to the Congress at least sixty days prior to adoption of a final leasing program. Congress can, of course, in that period or thereafter, adopt appropriate legislation, or take any other measures, as to that leasing program.

In addition, Section 23(c) of this Act provides for judicial review of a leasing program. Any person adversely affected or aggrieved (which could include a Governor of an affected state) by the leasing program can file a petition for review of the Secretary's approval of a program within sixty days to the United States Court of Appeals for the District of Columbia. The review before the Court of Appeals is to be made on the basis of the record before the Secretary, including comments and recommendations from the Attorney General and the various state and local governments, Regional Advisory Boards, and other persons and the Secretary's responses thereto.

Subsection 18(c)(4) provides that after the leasing program has been approved by the Secretary, or after June 30, 1977, whichever comes first, no OCS lease may be issued unless it is for an area included in the approved leasing program. The Committee believes that a five-year leasing program should be adopted, in accordance with this Act, as quickly as possible. However, the Committee also realized that to prepare a program in conformity with this Act might take up to 14 months, and that leasing should continue during this time.

There is intended to be no delay or interruptions in lease sales. During the period of time that the proposed leasing program is being considered and determined, leasing is to continue as heretofore. Once the leasing program is approved, leasing is to continue under that program. If the approved leasing program is under judicial challenge, it is up to the Court of Appeals for the District of Columbia as to whether an interim order is to be entered staying the effect of the leasing program and allowing leasing to continue as heretofore, or refusing such an interim order and having leasing continue under an approved program until judicial review is completed.

Subsection 18(d) provides that the Secretary must review the leasing program every year, and can revise and reapprove the program in the same manner as originally approved. An annual review is to assure that the program fully reflects updated information and changing conditions. Substantial changes in the program may be required in some years, and a new program must be prepared at least every five years. However, there may be some years where little or no change is required.

Subsection 18(e) requires the Secretary to establish procedures for receipt and consideration of nomination for areas to be offered for leasing or to be excluded from leasing, for public notice of, and participation in, development of a leasing program, for review by state and local governments, for periodic consultation with these governments, lessees, and representatives of other individuals or organizations involved in activity in the Outer Continental Shelf, including representatives of the fishing and tourist industries, and for coordination of the program with management programs established pursuant to the Coastal Zone Management Act of 1972. The Secretary presently uses a nomination process. The Committee intends that this form of industry and public participation in a leasing program be continued. In addition, the Secretary has established limited procedures for public participation and consultation in the development and maintenance of a leasing program. The Committee intends that this section will require him to strengthen and expand these procedures.

Subsection 18(f) authorizes the Secretary to obtain from public sources or purchase from private sources any surveys, data, reports or other information (including interpretations) which may be necessary to assist him in preparing any environmental impact statement, either for the entire leasing program, if necessary, or for any particular lease sale, and in making other evaluations required by this Act. Confidentiality of all data is to be maintained as in accordance with this Act, appropriate regulations, or agreement between the parties.

Subsection 18(g) directs the head of all federal departments or agencies to provide the Secretary with any non-proprietary information he requests to assist him in preparing a leasing program. In addition, the Secretary is to use the existing resources of federal departments and agencies wherever possible.

The intent of subsections 18 (f) and (g) is that the Secretary obtain all necessary information from all reasonable sources, but avoid duplication of data collection efforts wherever possible.

Section 19.—Regional Outer Continental Shelf Advisory Boards

Section 19 authorizes the Governors of states to be affected by OCS activities to establish regional boards. If such boards are established, representatives of the Secretary of the Interior, and other specified federal agencies, are to be entitled to participate as observers in all deliberations.

Presently, the Secretary of the Interior, rather than the Governors, has established certain regional advisory boards, consisting of representatives from states and from various federal agencies. The Committee intends by this section to formalize such boards. The Committee expects that many of the present boards will be converted into Re-

gional Outer Continental Shelf Advisory Boards authorized under this Act.

A Regional Advisory Board is to advise the Secretary on all matters relating to Outer Continental Shelf oil and gas activities.

Effect of Recommendations

Subsection (d) provides that if a Regional Advisory Board, or a Governor of a potentially affected state, makes a specific recommendation to the Secretary regarding the size, timing or location of a proposed lease sale, or on a proposed development and production plan, within sixty days after receipt of notice of such activity, the Secretary is to accept such recommendation unless he determines that it is not consistent with the national security or the overriding national interest, and then he must communicate, in writing, the reasons for such a determination.

The intention of this section is to insure that Governors of affected states and the Regional Advisory Boards have a leading role in decisions as to potential lease sales and production and development plans. Governors of affected states should consult with representatives of affected local governments and should forward their views, when appropriate, as part of their formal recommendations.

The intent of the Committee is to insure that the Secretary give thorough consideration to the voices of responsible regional and state officials in planning OCS leasing and development. In overriding any recommendation, the Secretary has to be able to state that to obtain oil and gas in a balanced manner, consistent with all the findings, purposes and policies of this 1976 Act, he was forced to reject a recommendation. The Committee resolved the potential difficulty of conflicting recommendations from different states by allowing the Secretary to accept the recommendations most consistent with the Act.

The Committee did not believe that any state should have a veto power over OCS oil and gas activities. The Committee fully expects, however, that the advice of the Board or the Governor, or both, be given full and careful consideration and be incorporated into the ultimate decision of the Secretary, insofar as they are not inconsistent with the balanced approach to OCS leasing set out in this Act, or unless compliance would be inconsistent with national security.

It is also expected that any recommendations made by a Governor, or a Regional Advisory Board, and the reasons for rejection of such recommendations, will be part of the record of any judicial proceeding as to a lease sale, provided for in the citizens' suit subsection (23(a)) or for review of a development and production plan, provided for in the judicial review subsection (23(c)). In these court proceedings, great weight need necessarily be given to the recommendations of an affected state or Regional Advisory Board, as they are only to be overridden for demonstrated national security or national interest purposes.

Section 20.—Baseline and Monitoring Studies

Section 20 provides a mechanism by which information concerning the environment in an area to be leased and then developed is to be analyzed and then used as a basis to monitor effects.

Subsection 20(a) provides that if any area or region is to be included in a lease sale, a study is to be undertaken to establish baseline

information concerning the status of the environment of the Shelf area involved and of the coastal areas which may be affected by exploration, development and production in that area. The study is to be conducted by the Secretary of Commerce, in cooperation with the Secretary of the Interior. The Committee intends that the National Oceanic and Atmospheric Administration (NOAA), and its Administrator, within the Department of Commerce, is to be used by the Secretary of Commerce to manage these studies.

The Committee understands that there is a great deal of controversy as to what is or is not "a baseline study." The Act only mandates that the information collected is to determine baselines.

The determination of what is or is not a "baseline" is not static. Therefore, a study to be submitted by the Secretary of Commerce, through his Administrator, will not necessarily be a "baseline study"; but will rather be a study collecting a baseline of information to be of use to those people conducting, administering, and reviewing activities on the Shelf. The Secretary of Commerce, through the Administrator of NOAA, is given the discretion to determine what information is necessary to make any necessary reports. It may be a "baseline" or any other method of environmental investigation. NOAA has been selected to conduct these studies because of its environmental and oceanic experience and expertise, as demonstrated by the fact that over one-half of all studies to collect such baseline information presently in operation are being undertaken by NOAA.

In designing these studies, the Administrator of NOAA, to the extent practicable, is to attempt to have the studies predict impacts on marine biota from low-level pollution or large spills associated with activities on the Outer Continental Shelf, and from drilling and the laying of pipelines. In addition, the studies should predict the impact of offshore activities on affected onshore areas.

In order to assure the prompt commencement and completion of these studies, subsection 20(a) mandates that if no such study has already been commenced, it must be commenced within six months from the date of enactment of the 1976 Act for any area or region where a lease sale has already been held, and in the future, is to be commenced in any area at least six months prior to the holding of a lease sale in such area. In those areas where studies have already commenced, the Secretary of Commerce, can utilize information already collected.

The Secretary of Commerce is to complete his study prior to the commencement of production in a lease area. The Secretary of Commerce shall, after being notified of the submission of any development and production plan, complete his study and submit it prior to the date for final approval of such plan. Ordinarily, therefore, the Secretary of Commerce, through the Administrator of NOAA, will have four to six years to prepare his study while exploration is being undertaken in a lease area. The burden is on the Secretary of Commerce, through his Administrator, to complete such a study prior to the development and production. Failure of the Secretary of Commerce to complete such study is not in itself to be a basis for precluding the approval of development and production. As the information to be obtained from such study would be of great value to the Secretary in

evaluating a development and production plan, the Secretary of Commerce should coordinate his studies with the activities of a lessee or permittee in a lease area so as to be able to complete his study prior to development and production.

Subsection 20(b) is intended to provide for continued study and monitoring of an area. As the Secretary of Commerce, through his Administrator, is required to submit a study prior to production, and as such study might not completely collect all necessary information, especially if there are recent environmental, economic, or recreational changes, additional studies might be appropriate. The Secretary of Commerce, through his Administrator, after submission of his first study to the Secretary of the Interior, is permitted to conduct any additional studies to establish baseline information as he deems necessary. In addition, he is to monitor the production areas in a manner designed to provide time series data which can be compared with earlier studies and previously collected data summarized in those studies for the purpose of identifying any significant changes and the possible cause of such damages.

Subsection 20(c) requires implementing regulations and procedures to be promulgated by the Secretary of Commerce, and calls for cooperation with the states in planning and carrying out studies and monitoring, including issuance of contracts to appropriate state agencies and universities. Although the Secretary of Commerce is given responsibility for conducting such studies, the Committee recognized that the Secretary of the Interior, and other agencies, have been collecting information to prepare environmental impact statements, as to the human, marine or coastal environments. The Committee wishes the studies mandated by this section to be cooperative efforts by all federal and state government agencies with the capability to undertake such studies. Information already collected should be used by the Secretary of Commerce, through his Administrator, so as to avoid redundant studies, or to supplement or reduce the scope of any new study.

Subsection 20(d) provides, that in addition to the study to be submitted to the Secretary prior to the development and production of an area, the Secretary of Commerce, through his Administrator, is to submit to the Secretary of the Interior, and to Congress, and to make available to the public, an assessment of the cumulative effects of OCS activities on the environment of the various regions affected.

Section 21.—Safety Regulations

Section 21 establishes procedures for review, updating, and availability of safety regulations, in light of the policy and findings of this Act related to the need for improved safety in OCS operations.

Responsibility for Regulations

Subsection 21(a) provides authority for the promulgation and revision of safety regulations applying to the construction and later operation of OCS facilities. Under the original OCS Lands Act, overall responsibility for preparing regulations as to activities in the Outer Continental Shelf was granted to the Secretary of the Interior (Section 5) and specific responsibility as to safety was given to the Coast Guard, and in some cases, to the Army (Section 4). While not

eliminating these agencies and departments from the preparation of safety regulations in Section 21 (and later from the enforcement of such regulations in Section 22), the Committee sought to involve other agencies in the preparation and enforcement of safety provisions.

The Committee intends that those agencies having expertise in their fields be given adequate authority and responsibility to apply their expertise in the development of regulations. Specific responsibility as to certain types of safety regulations are granted to various agencies which are expected to act jointly to determine lead-agency responsibility and methods of coordination. The Committee heard substantial testimony as to the present ineffectiveness of the present regulatory scheme for safety and intends that these additional agencies be involved in safety decisions to the maximum extent possible. The resolution of any jurisdictional or other dispute between agencies and departments of the federal government will, of course, be determined by the President.

Specifically, regulations for the protection of the environment are to be developed by the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and the Secretary of Commerce. It is the intention of the Committee that the Secretary of Commerce use the National Oceanic and Atmospheric Administration (NOAA), and its Administrator, within his Department, to carry out his responsibilities under this subsection.

Regulations for the avoidance of navigational hazards in waters above the Outer Continental Shelf are to be developed by the Secretary of the Interior, the Coast Guard and Army. Presently, Section 4 of the Outer Continental Shelf Lands Act assigns such responsibility to the Coast Guard and Army. (Section 4(e) (2) and Section 4(f).) The Committee intends that, insofar as existing regulations are adequate, or can be modified to be adequate, lead responsibility for the promulgation of such regulations should continue to be maintained by the Coast Guard and Army.

Development of regulations for occupational safety and health are to be developed by the Secretary of the Interior, the Coast Guard, and the Secretary of Labor. It is the Committee's intention that the Secretary of Labor use the Occupational Safety and Health Administration, and its Administrator, within his Department, for carrying out his responsibilities under this subsection. The OCS Lands Act of 1953 provided, in Section 4(a), that the Coast Guard had responsibility for the safety of any person, which would include occupational safety, on OCS facilities, and in adjacent waters. The Committee evaluated substantial testimony from individuals, unions, and government agencies as to the inadequacy, and sometimes complete lack of, regulations for the safety of workers in the Outer Continental Shelf.

In some cases, regulations have been prepared by the Coast Guard. In others, they were prepared by the Department of the Interior, through the United States Geological Survey (USGS). In still others, because of the failure of the Coast Guard and USGS to act, regulations, interim in nature, have only recently been proposed by the Occupational Safety and Health Administration. Finally, in some areas, such as the maintenance of safety below the water line on off-

shore platforms, there are no regulations. The Committee intended that the Occupational Safety and Health Administration, to the maximum extent possible, be given lead agency responsibility for the development of safety regulations as to the occupational safety and health, in coordination and consultation, of course, with the Secretary of the Interior and the Coast Guard.

The Committee also reviewed the Report on Safety Standards and Pipelines on Federal Lands and the Outer Continental Shelf which was submitted by the Secretary of Transportation. The Committee fully expects the Secretary of Transportation to exercise his existing authority on the shelf and on lands beneath navigable waters within state boundaries and to continue to issue and enforce regulations for offshore pipelines. As indicated by subsection (d), this Section is not intended to diminish or duplicate any authority of the Secretary of Transportation, presently provided by law, to establish and enforce such pipeline safety standards and regulations in the Outer Continental Shelf. The Committee understands that a Memorandum of Understanding has now been established between the Department of Transportation and the Department of the Interior as to pipeline safety standards and regulations. Nothing in this section is intended to supersede that Memorandum of Understanding.

Best Technology Required

The Committee, during its visits to offshore facilities, was impressed by the continuing ability of industry and others to develop newer and safer equipment. Paragraph 2 of subsection (a) mandates that regulations under this section are to require such updated equipment. Therefore, on all new drilling and production operations, the best available and safest technology economically achievable is to be required. Because of the impracticability of requiring the newest equipment on existing facilities, the best available and safest technology is to be required on existing operations wherever practicable.

The focus of this provision is to require that operations in the Outer Continental Shelf on leases are to be the safest possible. So long as the regulator finds that the adoption of a new procedure, technique or piece of equipment would not cause an undue economic hardship on a lessee, he is to require it on all new operations. On existing operations, the regulator is to balance the significance of the procedure or piece of equipment on safety. If adoption of new techniques or equipment would significantly increase safety, and would not be an undue economic hardship on the lessee or permittee, he is to require it on existing operations.

Safety Report and Compilation

Subsections (b), (c) and (e) provide for a review of existing regulations, promulgation of new safety regulations, and availability of such regulations to interested parties. The National Academy of Engineering is to study the adequacy of existing safety regulations and report, with recommendations, to Congress, the Secretary, and the Coast Guard within nine months. After receipt of the report and recommendations, and not later than one year after the date of enactment of the 1976 Act, a complete set of safety regulations is to be promulgated.

In order to provide easy access to the lessee, permittee, subcontractor, sublessee, or any other interested person, to the applicable regulation or regulations for activities on the Outer Continental Shelf, the Secretary of the Interior is required to prepare annually a compilation of all regulations, either prepared by the Interior Department or by any other agency of the federal government, applicable to activities on the Shelf, and to make it available to any interested person.

Any safety regulation presently in effect can be repromulgated if consistent with this Section. In addition, in preparing new safety regulations, the Secretary is not in any way to reduce the degree of safety or protection to the environment afforded by previous safety regulations.

The Committee did not intend in any way that the preparation of new safety regulations would, in itself, be a basis for the delay of lease sales, or leasing activity. Subsection (c) (1) specifically provides that present safety regulations are to remain in effect until new ones are promulgated.

Regulations for Hazardous Working Conditions

At its hearings, the Committee learned of a particular problem concerning the safety of divers in the waters above the Outer Continental Shelf. There are no regulations or standards applying to such diving activities. As noted earlier, one of the reasons for this lack of standards and regulations was the failure of the appropriate agency to act. The Committee is concerned that there might be other areas involving safety that are also unregulated. Paragraph 2 of subsection (c) of this Section requires that within sixty days after enactment of the 1976 Act, interim regulations are to be prepared by the Secretary of Labor, pursuant to the Occupational Safety and Health Act, as to diving activities and other unregulated hazardous working conditions on the Shelf. It is the intention of the Committee that the Secretary of Labor use the Occupational Safety and Health Administration, and its Administrator, within his Department, to promulgate such regulations, and that the Administrator consult with the Secretary of the Interior, and the Coast Guard, in developing such regulations. These regulations are to remain in effect until final ones are promulgated, but, of course, can be modified from time to time as necessary.

Section 22.—Enforcement

This section is intended to provide mechanisms and procedures for the enforcement of regulations issued pursuant to the provisions of this Act. Failure to comply with any provision of the Act, or any implementing regulation, would subject the violators to civil or criminal penalties under Section 24 of the 1976 Act.

Subsection 22(a) directs the Secretary of the Interior and the Secretary of the Department in which the Coast Guard is operating to enforce safety and environmental regulations, and the Secretary of the Interior and the Secretary of Labor (through the Administrator of the Occupational Safety and Health Administration) to enforce occupational and public health regulations. As with the development and promulgation of regulations, the responsible agencies and departments are to act jointly and cooperatively, and any resolution of jurisdictional conflicts or ambiguities is to be by the President.

All regulations are to be strictly enforced, and all operations are to be regularly inspected. To provide for such strict enforcement, subsection 22(b) provides that lessees or permittees are to allow access to any inspector promptly, and to provide any requested documents and records that are pertinent to occupational and public health, safety, or environmental protection. In addition, compliance with the Act, applicable regulations, and the terms of the lease, is required by all those responsible for actual operations. Thus, not only is a lessee or permittee responsible, but any employer or subcontractor utilized by that lessee or permittee to conduct operations on the Shelf, is also jointly responsible for the maintenance of safeguards in accordance with regulations.

To insure regular inspection, regulations are to be promulgated within 120 days after the enactment of the 1976 Act, by the Secretary of the Interior, with the concurrence of the Secretary of Labor (operating through his Occupational Safety and Health Administrator) and the Secretary of the Department in which the Coast Guard is operating, to provide for semi-annual physical observation of all installations, testing of all safety equipment and periodic surprise visits. The Committee expects that the Department of the Interior, the Department of Transportation (presently the Department in which the Coast Guard is operating), and the Department of Labor (within which the Occupational Safety and Health Administration is operating) will enter into a cooperative agreement which will clearly delineate the specific responsibilities of each agency.

Subsection (d) (3) specifically provides that these Departments can utilize the services, personnel or facilities of each other, or any other federal agency, in carrying out their responsibilities.

Investigations

The Committee was concerned with the lack of information concerning accidents as a result of activities on the Outer Continental Shelf. While presently the Coast Guard has the authority and responsibility to investigate all such accidents, whether or not they result in the loss of life, this permissive authority was not, in the Committee's opinion, adequately implemented. Subsection (d) (1) *requires* the Coast Guard to investigate and make a public report on every major fire and major oil spill occurring as a result of operations conducted pursuant to this Act. In addition, the Secretary of Labor, through his Occupational Safety and Health Administrator, is to make an investigation or report on any death or serious injury occurring as a result of operations conducted pursuant to this Act. These agencies are also given permission to investigate any other accident.

As it is possible, and perhaps even probable, that a major fire or major oil spill might also involve serious bodily injury or death, there may be instances where both Coast Guard and OSHA are given the responsibility to make an investigation and report. There may be other cases, as well, where both agencies, or other agencies pursuant to other Acts, are already conducting investigations. It is the intention of the Committee that the responsible agencies will act in a cooperative and joint fashion. Specifically, the agencies may utilize the services, personnel and facilities of each other, or of any other federal agency.

Subsection 22(c) requires that the Secretary of the Interior, the Secretary of Labor (intended to be operating through the Occupational Health and Safety Administration), or the Secretary of the Department in which the Coast Guard is operating, consider any allegation of any person of the existence of a violation of any safety regulation, respond to such allegation within thirty days, and submit findings within ninety days stating whether or not such alleged violation exists, and if so, what action has been or will be taken. Full authority to conduct such an investigation is granted, with the power to summon witnesses, and to require production of evidence. A report on the allegations and the findings is to be included by the Secretary of the Interior in his annual report.

This provision is designed to allow any interested person, including a union official, a subcontractor or lawyer, or a local or state governmental official, who believes the safety regulations are being violated, to trigger an investigation. In most cases, this form of involvement would be more effective than, and hopefully eliminate the need for, legal action.

Subsection 22(h) is intended to supply an additional power to the Secretary of the Interior in enforcing regulations under this Act. Other sections of the 1976 Act provide for termination or cancellation of a lease, in the discretion of the Secretary, when a lessee or permittee fails to comply with applicable regulations, and for civil and criminal penalties for such failures to comply. However, there may be cases where violation of a regulation in itself is insufficient to merit cancellation or a civil or criminal penalty. However, a lessee should not be able to avoid responsibility for repeated and continued violations, even though any one of the violations would be insufficient for action. This subsection provides that the Secretary shall, after an administrative hearing, cancel any lease where the owner or operator of the lease has repeatedly failed to comply with safety regulations and thereby has presented a clear and present danger to health, safety or the environment, or has repeatedly failed to comply, unjustifiably, with other regulations which are to assure maximum efficient and safe development of leases. The cancellation of a lease, after administrative proceedings, would be subject to judicial review in an appropriate United States district court, pursuant to subsection 22(b). As with any other cancellation, or termination, for failure to comply with appropriate provisions or regulations, the lessee would not be entitled to any form of compensation for the loss of his lease.

Section 23.—Citizens' Suits, Court Jurisdiction, and Judicial Review

Section 23 details the procedures by which citizens, including lessees, or permittees, employees, local and state governmental officials, and others, can participate in the enforcement of the Act. Review of certain types of actions are through administrative proceedings, followed by an appeal in a court of appeals. Review of other actions are by suits in a district court.

Citizens' Suits

Subsection 23(a) provides for citizens' suits against any person, including any governmental agency, alleged to be in violation of the Act, applicable regulations, or the terms of any lease or permit issued under

the Act, or against the Secretary of the Interior or any other federal government official, given regulatory and enforcement power under this Act, for alleged failure to perform a nondiscretionary act or duty.

No such citizens' suit action may be commenced until sixty days after written notice, under oath, of the alleged violation to the alleged violator and to the appropriate federal official. If the official, or the Attorney General, begins and diligently prosecutes an action against the violator, no court action could take place on the citizen's suit, but the complainant would have the right to intervene. The sixty-day waiting period does not apply when the violation or failure to act involves an imminent threat to the public health or safety or would immediately affect the legal interests of the plaintiff. If any action is commenced by a citizen, pursuant to this section, the appropriate federal official, or the Attorney General, if not already a party, can intervene as a matter of right on either side.

This provision for notice, and a waiting period, is designed to give the appropriate federal official, the Attorney General, and the alleged violator, an opportunity to promptly stop any violation, and thus limit, or eliminate, the need for any court action.

This citizens' suit provision is intended to define the procedure for a person to challenge actions, or secure enforcement of regulations, with a few limited exceptions. Under subsection (c) of this section, the establishment of a leasing program, or the approval, modification or disapproval of an exploration plan or of a development and production plan, are to be litigated in administrative proceedings and then reviewed in a Court of Appeals. They would not be subject to citizens' suits in a district court under subsection (a).

This subsection defines the procedures to be followed in filing a suit. No substantive right of any citizen to secure a remedy is eliminated. Specific provisions provide that any statutory procedure or remedy provided in other statutes, such as the National Environmental Policy Act, the Deepwater Ports Act, the Clean Air Act, or the Fish and Wildlife Act, are not precluded. However, if a person wishes to challenge any action or inaction concerning the activities on the Outer Continental Shelf, for failure to comply with the Act, appropriate regulations, or specified lease terms, he is provided a method to do so by this provision.

Section 23(a) provides that suits may be brought by "any person having an interest which is or can be adversely affected." Thus, the scope of persons who can sue are those who can show an actual interest that is being negatively affected, or will probably be negatively affected at a reasonable time in the future. The interest must be discernable and ascertainable. Standing to sue includes not only those who have an economic interest, or who have suffered or will probably suffer a tortuous injury, but also those who may have a definable aesthetic or environmental interest. Specifically, the Committee intends that this includes persons who meet the requirement for standing to sue set out by the Supreme Court in *Sierra Club v. Morton* 405 U.S. 727 (1972).

Jurisdiction

Subsection 23(b) reincorporates the jurisdictional provisions previously found in section 4(b) of the OCS Lands Act of 1953. Citizens' suits, or other cases or controversies arising out of any activity con-

ducted on the shelf, including cancellation, suspension or termination of a lease or permit, or the rights to natural resources (as, for example, between the state and the federal government), are to be brought to the United States district court in which the defendant resides or can be found, or in a judicial district of the state nearest to the place at which the controversy arose. Whether the proceeding is for an original hearing as in the case of a dispute between the state and federal government over resources, under subsection 8(b), or for appellate-like review, as in the case of an environmental cancellation, is determined by the nature of the case or controversy and the provisions of this Act.

Judicial Review

Subsection 23(c) provides a different procedure for challenges to certain kinds of decisions by the Secretary of the Interior. Review of a leasing program, an exploration plan, or a development and production plan, can be based on the written document itself. Moreover, specific mandates are given to the Secretary of the Interior to make proposals or drafts of these documents available and to consider the opinions of affected persons. Thus, unlike a lease sale determination covered by the citizens' suit provision, if appropriate administrative proceedings are undertaken, there is a less of a need to create a record at a trial court, and thus review in a court of appeals would not only be sufficient, but also appropriate, as being able to reduce litigation.

Any person "adversely affected or aggrieved" by action on the program or plans, as that term is described in the discussion on subsection (a), who has participated in administrative proceedings leading to those actions, can petition for review. The Committee noted that review of a leasing program would involve consideration of various regional interests and problems, and a determination as to propriety of such a program would have to balance the needs and problems of all those regional areas, and of the federal government. Therefore, in order to provide for a consolidated review mechanism, review of a leasing program is to be only in the United States Court of Appeals for the District of Columbia. Review of an exploration plan or a development and production plan, would be held closer to the area in which the plan was submitted, in the United States Court of Appeals for a circuit in which an affected state is located.

A petitioner must seek review within sixty days after the date of the challenged action, and must promptly submit copies of his petition to the Secretary and to the Attorney General.

The Court of Appeals is to consider the matter upon review of the record made before the Secretary. The Secretary is to file records of any public hearings, and to supply any additional information on which he based his decision. The findings of the Secretary, if supported by substantial evidence on the record, considered as a whole, shall be conclusive. The Court of Appeals can affirm, vacate, or modify any order or decision, or can remand proceedings back to the Secretary for further action as it may direct. Of course, the judgment of the Court of Appeals can be subject to review by the Supreme Court of the United States upon a writ of certiorari.

In order to assure that citizens will have the assistance of effective counsel, the court in issuing any final order in a citizens' suit or judi-

cial review, can award costs of litigation, including reasonable attorneys' fees, to a party in an appropriate case. In order to avoid frivolous litigation, the court can require a bond or equivalent security if a temporary restraining order or injunction is sought. Finally, in order to avoid delay because of judicial action, any court action under this section is to take precedence on the docket of the courts, be set for a hearing at the earliest practicable date, and be expedited in every way.

Section 24.—Remedies and Penalties

Section 24(a) authorizes the Attorney General, or a United States Attorney, at the request of the Secretary of the Interior, the Secretary of Labor, or the Coast Guard, to institute civil actions to enforce the Act or any regulation or order issued under this Act.

Subsection 24(b) provides for a civil penalty to be assessed against any person, who, after notice, a reasonable period for corrective action, and a hearing, continues to fail to comply with the Act or any regulation or order under it. The maximum penalty is \$10,000 per day.

Subsection 24(c) provides criminal penalties for knowing and willful violations of any provision of this Act, or any regulation or order issued under the authority of this Act, designed to protect public health, safety, or the environment, or conserve natural resources. There are also criminal penalties for any person who knowingly and willfully makes any false statement, representation, or certification in any application; record, report or plan or other document filed or required to be maintained under this Act; who knowingly and willfully falsifies, tampers with or renders inaccurate any monitoring device or record required to be maintained under this Act; or who knowingly and willfully reveals any data or information required to be kept confidential by this Act.

The criminal penalty is a fine of not more than \$100,000, or imprisonment for not more than ten years, or both. However, each day that a person violates a regulation, or each day that a monitoring device remains inoperative or inaccurate, will be considered a separate offense, subject to the maximum fine and penalty.

Subsection 24(d) provides for application of the criminal penalties against corporate officials when the violator is a corporation or other business entity, and the officer or agent knowingly and willfully authorized, ordered or carried out the proscribed activity.

Subsection 24(e) states that the remedies and penalties in this section are to be concurrent with each other, and any other remedies afforded by any other law or regulation.

Section 25.—Oil and Gas Development and Production

Section 25 is intended to provide the mechanism for review and evaluation of, and decision on, development and production in a leased area, after consultation and coordination with all affected parties. The Committee recognized that, in many cases, there is no real separation between exploration and production. Exploration activities, including delineation drilling, can continue in a lease area even after production has commenced. However, the Committee also recognized that there is a point in time when the lessee has to make a decision whether or not he is going to order a platform, seek related onshore support facilities, and commence substantial development and produc-

tion in a lease area. This decision is perhaps, with the exception of the purchase of a lease, the key decision, with the most significant effects, relating to OCS activities.

Recognizing the need for affected states, and other interested persons, to receive information and input into development and production decisions, the Interior Department recently finally adopted regulations providing for a lessee to supply a development and production plan to the Secretary of the Interior prior to commencement of development and production. In addition, these new regulations provide for information concerning the expected onshore development as a result of such development and production offshore to be forwarded to the states. Section 25 seeks to strengthen and enact into law the protections afforded by these regulations, and mandate procedures for the review and approval, disapproval, modification, or revision of development and production plans. This section utilizes the natural pause that occurs when a lessee determines he is to commence a major development as the basis to supply needed information to affected states and other interested persons, and to provide a mechanism for decisions as to continued activity on a lease.

Offshore Plan and On-Shore Statement

Subsection 25(a) provides that prior to development and production, a lessee is to submit a development and production plan to the Secretary for approval. The plan is to be accompanied by a statement describing facilities and operations other than on the Outer Continental Shelf resulting from activities on the shelf.

The requirement of submission of a development and production plan for approval, and of the statement for review, applies both to leases issued after enactment of this Act, and to those leases issued prior to enactment, on which development has not yet commenced. The Committee believes requirement of submission of a plan, and its approval, is a reasonable regulation, especially in light of the present regulations dealing with the submission of such plans and information prior to development and production. However, as Section 25 provides a new mechanism for approval, and disapproval, of a lease, the Committee believed it inappropriate to apply it to any lease where development and production has already commenced.

The statement as to onshore facilities and operations is to describe the nature, extent, and location of facilities to be constructed and utilized, and safety protections to be implemented. This statement can only be in a degree of detail available to the lessee. Therefore, the lessee is only required to describe those facilities and operations which he reasonably should know and which he himself proposes. This statement as to onshore facilities and operations is not subject to the approval of the Secretary, as the Secretary's responsibility is only as to offshore operations. Relevant, state, local, regional, or other bodies have, or should have, appropriate procedures and mechanisms to review these proposed activities and grant or deny permission for them to occur.

The development and production plan, which is subject to the approval of the Secretary, is to describe, to the extent available at the time of its submission, information about the nature and extent of the proposed development, including specific work to be performed,

a description of all offshore facilities and operations directly related to such development, environmental safeguards and safety standards to be implemented, an expected rate of development and production, a time schedule of performance, and other relevant information as the Secretary may require. The plan may apply to more than one lease.

The Committee recognizes that there must be flexibility in the degree of detail required in the plan, or in the statement of information. Therefore, that degree of detail is to be established by regulations issued by the Secretary, which of course, are subject to modification and revision.

The information supplied by the lessee is to be his best estimate, and should not be open to attack on the basis of reliance, if it is a reasonable attempt to comply and supply the necessary information.

Within ten days after receipt of the development and production plan, and the statement of information, the Secretary of the Interior is, with limited exceptions, to submit such plan and statement to the Governor of any affected state and to any appropriate Regional Board, and also to make such plan and statement available to any other interested person, including the executive of any affected local or government area. The Secretary may withhold some of the material if it is confidential or privileged information. Under section 26(c) (2), however, the Secretary must make even this confidential information accessible to a Governor, subject, of course, to a requirement that that designated official himself maintain confidentiality. Access to all information is therefore provided to any affected state. Copies of privileged information is not to be provided to the state, and access and copies are not to be provided to other interested persons.

Subsections 25(d) and (e) provide for the procedures for review and approval of a development and production plan. Such review can be conducted in two ways—either through procedures established by the National Environmental and Policy Act, applicable to “major federal actions significantly affecting the quality of the human environment,” or through submission of comments and recommendations by interested persons.

NEPA Review

The Secretary is to review a development and production plan and declare his findings as to whether such development and production is a “major federal action” requiring a draft environmental impact statement to be prepared, followed by public hearings, and concluded by the preparation of a final environmental impact statement. The Committee intends that the provisions of the National Environmental Policy Act of 1969 (NEPA) shall apply. The provisions of this Act determine whether any particular activity is a “major federal action” requiring the appropriate procedures. However, the Secretary is instructed by the 1976 OCS Act that at least once prior to major development being authorized in any previously undeveloped structure, area or region, the NEPA procedures involving environmental impact statements and a hearing are to be applied. It may be possible, of course, that development pursuant to later proposed development and production plans in an area may also be a “major federal action” under the National Environmental Policy Act. The mandate of at

least one set of environmental impact statements and hearings does not in any way limit the applicability of NEPA to later activities or approval of later plans.

If development and production pursuant to a plan is found to be a major federal action, the Secretary may require lessees on adjacent or nearby leases to submit preliminary or final plans for their leases for consideration and review at the same time as consideration and review of the submitted plan. The Secretary is to transmit the draft environmental impact statement to the Governor of any affected state, and the appropriate Regional Board, and the executive of any local government or area, and is to make such draft available to the public.

The Secretary is to conduct the NEPA public hearing, review its record, and within sixty days after releasing the final environmental impact statement, approve, disapprove or require modifications of the plan.

Comment and Recommendations

The other review procedure is through comment. If development and production pursuant to a plan is not found to be a major federal action, the Governor of any affected state, any appropriate Regional Outer Continental Shelf Advisory Board, and the executive of any local government agency or local government area, can submit comments and recommendations to the Secretary within ninety days of receipt of the plan from the Secretary. As described in section 19, the Secretary must accept recommendations submitted by any affected Governor, or Regional Advisory Board, whether under the NEPA procedure or the comment procedure unless he determines they are "not consistent with the national security or the overriding national interest." Such comments and recommendations are to be made available to the public upon request and any interested person can also submit comments and recommendations. Within 120 days after the ninety days period provided for comments and recommendations, the Secretary is to approve, disapprove, or require modifications of a plan.

As detailed in section 23, the action of the Secretary in approving requiring modifications of, or disapproving any development and production plan is subject to judicial review in the United States Court of Appeals for a circuit in which an affected state is located.

Modifications, Revisions, and Disapproval

Detailed provisions are provided for modifications, revisions, and disapproval of a plan. The Secretary is to require modifications of a plan if he determines that the lessee has failed to make adequate provision in a plan for safe operations or for the protection of the marine or coastal environment. In order to preserve the rights of states and local governments to regulate land use within their jurisdiction, the Secretary may not require any modification which would be inconsistent with a state coastal zone management program, approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), or with any valid exercise of authority by the state involved or any political subdivision thereof.

The Committee expects that federal, state and industry cooperation will resolve almost every dispute over proposed development and pro-

duction plans. Once a lease has been issued, it should be the unusual case where an acceptable plan cannot eventually be agreed upon. Reasonable modifications, in light of comments and recommendations, and any hearings, would provide protection to the environment, to any affected state, and also allow prompt and efficient development. *

However, the Secretary is given the authority to disapprove a plan, but only for three specified reasons. The Secretary shall disapprove a plan only (1), if a lessee fails to demonstrate that he can comply with the requirements of federal law, including this Act; (2), if a plan cannot be modified so as to be, to the maximum extent possible, consistent with coastal zone management programs of coastal states or valid exercises of authority by the state involved, or any political subdivision thereof; or (3) if, because of exceptional geological conditions, exceptional resource values, or other exceptional circumstances, the proposed plan cannot be made to insure safe operation.

If disapproval is because of the first two cases in that a lessee cannot demonstrate compliance with the law, or because the lessee, having known of applicable coastal zone management programs, or state or local laws applying to activities, cannot prepare a plan consistent with that program or those laws, he would not be automatically entitled to compensation because of a disapproval. Disapproval in these cases could be followed by suspension, termination or cancellation of a lease. If the lease is cancelled in these cases for environmental reasons, the lessee, of course, as provided in subsection 5(a) shall be entitled to any compensation as required by the Constitution or any other law.

The Committee believed, however, that if a lease is disapproved through no fault of a lessee, because development and production cannot be modified so as to insure safe operation, a lessee should be entitled to full reimbursement. Activity on a lease is effectively precluded, and therefore the lease is to be deemed cancelled, and the lessee is to be entitled to reimbursement for all considerations paid for the lease, plus interest, and all direct expenditures made after the day of issuance of such lease. It was the Committee's belief that such disapproval for safety reasons would be most unusual. In almost all cases, if an area was leased, operations pursuant to a lease should be able to be modified so as to insure safe operation. Only if such modifications are impossible would the extreme remedy of disapproval, followed by cancellation and reimbursement be necessary.

Of course, even if activities on a lease pursuant to a development and production plan are approved, or modified and then approved, such activities can later be suspended, and such lease can be cancelled or terminated, at any time, as provided for in regulations pursuant to subsection 5(a) of this Act.

The Committee recognizes that, of necessity, some flexibility is needed in administering the development and production activities pursuant to a plan. Some exploration activities will continue during development and production phases, pursuant to a plan. Later discoveries, or other events, might indicate the need to have a plan revised.

Periodic review of the plan in light of changes in available information and other onshore or offshore conditions is required, and if the review indicates that a plan should be revised in light of such changes, the Secretary shall require revision. In addition, the Secre-

tary can allow revisions, requested by an operator, if such revision will lead to greater recovery of oil or gas, improve the efficiency, safety and environmental protection of operations, or will be the only means available to avoid substantial economic hardship to the lessee. Such revisions can be allowed only if it is consistent with the protection of the environment. Any revision of an approved plan which is significant is to be reviewed after the comment and recommendation procedures applicable to the initial decision on a plan, and if necessary, through the NEPA procedures for a "major federal action."

Ordinarily, as described in subsection 5(d), failure to comply with the Act, lease terms, or applicable regulations on a producing lease, can result in cancellation only after an appropriate proceeding in the United States district court. The Committee was concerned that applying this type of judicial proceeding to the development and production plan might lead to delays. Subsection 25(i) provides that the Secretary may cancel or terminate a lease for failure of an owner to submit a plan, or comply with a plan, after notice is given of such failure, a reasonable period allowed for corrective action, and an administrative hearing is held. The termination or cancellation is in effect at the completion of the administrative proceedings. Judicial review, rather than judicial approval, is to occur in the United States district court. Termination of a lease because of a failure to comply with any approved plan, including modifications or revisions, is clearly the fault of the lessee, and therefore, as specifically stated in subsection (i), the lessee is not entitled to compensation.

The Committee recognizes that there might be cases where a minor failure to comply would not warrant the Secretary cancelling or terminating a lease. However, as with regulations, an overall pattern might be established. In such situations, the Secretary is to utilize the procedures described in section 22(h) for cancellation of a lease where the owner or operator of a lease has by a repeated course of conduct, or through an overall pattern, failed to substantially comply with his plan.

Section 26.—Outer Continental Shelf Oil and Gas Information Program

Section 26 describes the procedures and requirements for obtaining and releasing information from lessees and permittees.

Subsection 26(a) requires lessees and permittees to grant the Secretary of the Interior access to all data obtained from OCS activities. Copies of specific data and interpretations are to be furnished upon request to the Secretary. If interpretations are supplied, the lessee or permittee is not to be held responsible for any consequence of its use or for any reliance upon them, provided they are made in good faith.

Federal agencies are to provide the Secretary with relevant information in their possession. Also, any information furnished in the same manner and form as used in the normal conduct of a lessee's business, are to be supplied free of charge, except for the reasonable reproduction costs. If information is requested in some other form, however, or if any information is requested from a permittee generally, the Secretary is to pay the reasonable costs of both processing and reproduction.

Planning Information to States

Subsection 26(b) requires that information from lessees and permittees be processed, analyzed, and interpreted by the Secretary and then a summary of data made available to affected States. Such summary shall include estimates of the amount of oil and gas, the size and timing of development if and when oil and gas is found, and the expected locations of facilities and pipelines.

The intent of this subsection is to ensure that affected states are provided summaries of all information relating to potential or existing OCS production in order to assist them in planning for any on-shore impact. Recognizing that all states may not have the resources to review information or may not be supplied with certain information because of confidentiality provisions, this subsection would ensure that the states have comprehensive and timely information available as soon as feasible for comment and planning purposes.

Confidentiality

Subsection 26(c) requires the Secretary to promulgate regulations to assure the confidentiality of privileged information received under this section. These rules must set forth the time periods and conditions for any eventual release of such information. The regulations must also include a provision that privileged information itself is only transmitted to States if a lessee or permittee and all owners of the information so agree.

If there is no agreement as to release of information, the Governor of the affected state or his designee has the right as provided in subsection 26(d) (2) to inspect such information at regional offices of the Department of the Interior. However, no such inspection of confidential information is permitted prior to a lease sale covering the area about which the information was developed.

Subsection 26(d) requires the Secretary to transmit to affected States and any appropriate Regional Advisory Boards all relevant information received or prepared by the Secretary under this section, subject to applicable confidentiality regulations. This includes all relevant programs, plans, summaries, reports, EIS's, tract nominations (including negative nominations), lease sale information, including all modifications, revisions, and comments. Any privileged information transmitted to the States or knowledge obtained by the States through inspection is subject to confidentiality regulations.

Subsection 26(e) preempts any state law which might provide for public access to privileged information obtained by the State from the Secretary.

Subsection 26(f) requires the Secretary to withhold privileged information from any state which he finds cannot or does not comply with confidentiality regulations. Transmittal may be resumed when such situation no longer exists.

Under subsection 26(g) any geological and geophysical information obtained in the conduct of exploration by any Federal agency (or Federal contractor) may not be withheld from the public.

Section 27.—Federal Purchase and Disposition of Oil and Gas

Section 5 of the Outer Continental Shelf Lands Act Amendments of 1953 allows the Secretary of the Interior to reserve oil and gas accrued

or reserved to the United States as royalty. Present regulations issued by the Department of the Interior, 30 C.F.R. Section 225A, provide for the disposal or distribution of such royalty oil. The 1976 Amendments to the Outer Continental Shelf Lands Act provide many new bidding options, involving royalties and net profit shares. Section 27 is intended to provide the procedures for the securing of royalty and net profit share oil and gas, and if no royalty or net profit share is part of an accepted bid, for purchase of oil and gas, and the distribution of such oil and gas.

Section 27(a) provides that the Secretary of the Interior can demand that all royalty or net profit shares, or both, accruing under any lease or permit issued or maintained under the Outer Continental Shelf Lands Act is to be paid in oil and gas. Paragraph (2) of this subsection provides that in those cases where there is a royalty or net profit share amounting to less than $16\frac{2}{3}$ percentum by volume of the oil and gas produced, the Secretary shall have the right to purchase oil or gas from leases at the regulated price, or if there is no regulated price, at the fair market value. This paragraph allows the Secretary to purchase oil and gas so that he can make it available as he would otherwise make available royalty or net profit share oil or gas, when he accepts bids with a low or no royalty or net profit share, or where after production on a lease has commenced, the Secretary agrees to reduce or eliminate the royalty or net profit share. However, the Secretary cannot obtain, either by purchase or royalty or net profit share, no more than $16\frac{2}{3}$ percentum by volume of the oil and gas or the percentage of the royalty or net profit share, which ever is greater.

Paragraph (3) of this subsection also provides that the Secretary, instead of selling royalty, net profit share, or purchased oil and gas under this section, can transfer it to other agencies for disposal within the federal government.

Subsections (b) and (c) provide for the distribution of royalty, net profit share, or purchased oil and gas respectively. Under both subsections, if any law provides for the mandatory allocation of either oil or gas, or provides for a regulated price for such oil or gas, or provides for both, those provisions of law dealing with allocation and regulated price are to apply. Procedures established in regulations by the Secretary for distribution of oil or gas apply only in the absence of any statutory provision setting a mandatory allocation or a regulated price for OCS oil and gas.

Subsection (b) provides that oil obtained pursuant to this section not otherwise allocated or regulated, is to be offered to the public and sold by competitive bidding at not less than its fair market value. Fair market value is defined in section 2 of this Act.

In accordance with the Small Business Act (15 U.S.C. 631), the present regulations for the disposition of royalty oil provide for allocation of such oil to "small refiners." It is the intention of the Committee that such disposition be continued. Therefore, section (b) also provides that if the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, he is to make the oil he has obtained available, either through a lottery or an equitable allocation, in such a way as to insure sufficient amounts of such oil to small refiners. Small refiners are defined, as presently in the regulations, as owners of a refinery or refineries which qualifies as a small business concern under the rules of the Small Business Ad-

ministration, and who are unable to purchase on the open market an adequate supply of oil to meet their needs.

Subsection (c) provides that, in the absence of mandatory allocation, the Secretary is to sell to the public by competitive bidding any gas obtained pursuant to this section. If the Secretary finds that there is an emergency shortage of gas in any particular region of the United States, the Secretary may allocate or conduct a lottery for such gas and limit participation in such sale, allocation, or lottery to persons or business concerns serving regions suffering such a shortage.

There is, of course, the possibility that oil or gas obtained will not receive acceptable bids, and not be able to be otherwise transferred to another federal agency for use. In such a situation, or in any other situation, subsection (d) provides that the lessee is to take back any federal oil or gas and pay to the United States an amount equal to the regulated price or if there is no regulated price, the fair market value.

Presently, section 12(b) of the Outer Continental Shelf Lands Act provides the Federal Government, in emergency situations, has the right to purchase all of the oil or gas obtained from the Outer Continental Shelf. Subsection (f) of this section makes it explicit that nothing in this section is to eliminate that power.

Section 28—Limitations on Export

The findings, purposes, and policies of the 1976 Act make it clear that the development of the Outer Continental Shelf is to be one method to reduce dependence on foreign energy sources and increase the domestic supply of oil and natural gas. It is the intention of the Committee that oil and gas obtained on the Outer Continental Shelf of the United States be reserved for domestic use only. Section 28 limits exports of any OCS oil and gas. Exports are to be allowed only in cases of exchange agreements, efficiency, or the national interest, and then only when such exports do not add to dependency on foreign energy sources and when the President makes a specific finding to this effect. The President must submit his findings and recommendations to Congress as to the export of any oil or gas for approval or disapproval. If the Congress, within 60 days, passes a concurrent resolution of disapproval stating that such export would not be in the national interest, further exports are to cease.

This procedure is in conformity with prior acts of Congress. In section 103(b) of the Energy, Policy and Conservation Act, P.L. 94-163, 89 Stat. 969, 42 U.S.C. 6203, exports of oil and gas produced domestically are precluded unless there is a specific exemption. Later sections of that act also provide for reports to Congress. It is the intent of the Committee to further limit possible export of domestically produced oil and gas by requiring not only reports to Congress, but the ability of Congress to disapprove such exports. The procedure adopted in section 28 is that adopted in section 28(u) of the Minerals Leasing Act of 1920 (30 U.S.C. 185(u)), as amended in 1973.

TITLE III—OFFSHORE OIL POLLUTION FUND

Title III provides the procedures to be followed in the event of an oil spill and compensation for clean-up costs and damages resulting from such a spill. The Title applies to spills from any offshore facility

in OCS, and any transportation device, including vessels for delivery of the oil and gas from the offshore facility.

Section 301—Definitions

This section defines twelve terms which appear in the oil spill liability Title.

The section first defines what expenses are to be included in assessing liability by a spiller off a newly created pollution fund. The Committee intends that the Department of Transportation establish specific criteria, consistent with these definitions, for the determination of "clean-up costs" and "damages."

"*Clean-up costs*" are to include all reasonable and actual costs incurred in removing or attempting to remove oil discharged from an offshore facility or vessel or in attempting to prevent, reduce, or mitigate damages from such a discharge. Costs incurred by the federal government, any state, local or foreign government, and the contractors and subcontractors of such governments, including administrative expenses, such as the transportation of personnel and equipment to and from an oil spill, are specifically covered. The Committee hopes and expects that state, local and foreign governments will cooperate fully with federal officials in cleaning up oil spills, but they need not be operating under federal supervision in order to be eligible for reimbursement for their clean-up costs pursuant to this Title. Clean-up costs must be "reasonable" (necessary, and approximately equal to the market value of similar goods and services), and "actual" (really incurred).

"*Damages*" are to be all direct and actual injuries, except clean-up costs, which are proximately caused by the discharge of oil from an offshore facility or vessel. The types of damages recoverable under this Title, such as injury to real or personal property or natural resources and loss of income or earning capacity, are listed in section 307. The Committee intends the phrase "direct and actual" to refer to the nature of the injury and not the cause of it. In order to claim damages under this Title, a claimant must be directly and actually injured, but such injuries need only be "proximately caused" by an oil discharge.

"*Discharge*" includes any spilling, leaking, pumping, emptying, pouring, or dumping, whether intentional or unintentional, and applies to accidental as well as intentional or operational discharges.

An "*offshore facility*", included within the scope of this Title, is any oil refinery, drilling structure, oil storage or transfer terminal, pipeline, or related appurtenance which is used or capable of being used to drill for, pump, produce, store, handle, transfer, process, or transport OCS oil, but does not include vessels or deepwater ports. To be considered an offshore facility under this Title, a facility need only be located seaward of the high water mark. It therefore includes facilities within state waters, as well as those on the Outer Continental Shelf. Vessels are separately defined and are separately treated by this Title. However, once a drilling ship or other watercraft is attached to the seabed for exploration, development or production, it is to be considered an "offshore facility" rather than a vessel, for purposes of applying the differing requirements for a facility as compared to a vessel.

A "*vessel*" means every description of watercraft or other contrivance, whether or not self-propelled, which is used to transport oil

directly from an offshore facility. After oil has been landed in any state, and transferred to an onshore facility or another vessel, vessels which subsequently transport such oil are not considered vessels for the purposes of this Title.

This Title establishes a fund for the payment of damages beyond a set maximum of liability for the spiller. For convenience, this Section defines "*fund*" as the Offshore Oil Pollution Compensation Fund established under section 302(a) of this Title, and "*revolving account*" as the account in the U.S. Treasury for the Fund which is established under section 302(b) of this Title. The fund is to be administered by the Department of Transportation, while the revolving account, which supplies monies to the fund, is to be located in the Treasury. Amounts in the revolving account are to be made available to the fund through an appropriations act.

Liability for all clean-up costs and for damages to a set maximum is placed on an "*owner*" and on an "*operator*" which are defined in three different ways, according to what is being owned or operated. The owner or operator of an offshore facility is any person owning or operating such facility, whether by lease, permit, contract, license, or other form of agreement. The owner of an offshore facility which was abandoned without the prior approval of the Secretary of the Interior is the person who owned the facility immediately prior to its abandonment. If the facility was abandoned with the prior approval of the Secretary, the previous owner would not be liable for any discharges from the facility. The owner or operator of a vessel would be any person owning, operating, or chartering by demise the vessel.

"*Person*" is defined to include any legal entity, including an individual, a public or private corporation, partnership, or other association, or a government entity, and "*person-in-charge*" is to apply to the individual immediately responsible for the operations of an offshore facility or vessel. In the event that such individual is not aboard the offshore facility or vessel, the one who has been assigned, or who has assumed, his responsibilities is to be considered the person-in-charge.

The "*Secretary*" referred to in this Title is to be the Secretary of Transportation. It is the intent of the Committee that the Secretary delegate authority to the Coast Guard to implement and administer the provisions of this Title.

An "*incident*" is any occurrence or series of related occurrences which cause, or immediately thereafter, oil pollution, meaning a harmful discharge as described in Section 303 of this Title. The incident may involve one or more offshore facilities or vessels.

Section 302.—Establishment of the Fund and the Revolving Account

Section 302 establishes an Offshore Oil Pollution Compensation Fund in the Department of Transportation. It is the intention of the Committee that the Coast Guard fulfill the responsibilities of the Department with respect to administration of the Fund. The fund may sue or be sued in its own name.

A revolving Treasury account is also established, without fiscal year limitation, to be available to the fund. Subsequent appropriations legislation is to be enacted with general language establishing the fund and the revolving account, without fiscal year limitation, and with provisions for the use of the revolving account by the fund.

Section 321 of this Title authorizes appropriations for the establishment and operation of the revolving account and the fund, and initial and continuous funding for this Title.

Section 303.—Prohibition

This Section prohibits the discharge of oil from any offshore facility or vessel in quantities which the President determines to be harmful under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)). Pursuant to that Act, the Environmental Protection Agency has established that, with certain exceptions, any quantity of oil which forms a sheen on a water surface is harmful, thus prohibiting the discharge of oil in any appreciable quantity from offshore facilities and vessels.

Section 304.—Notification

Any person in charge, as defined in Section 304, of an offshore facility or vessel must notify the Secretary as soon as he learns of any oil discharge in harmful quantities from such facility or vessel. Failure to notify is punishable by a fine of up to \$10,000 or one year in jail, or both.

Report of an oil spill as soon as it occurs enables federal officials to be promptly sent to the spill scene to supervise or undertake clean-up activities. If the corporation which owns or operates the facility or vessel, and not the person directly in charge, was held responsible for notification, the commencement of clean-up operations might be substantially delayed. The sooner that clean-up actions are taken following a spill, the easier and less expensive it is to clean it up.

In order to encourage prompt and accurate notification, a limited immunity provision is included. Notice or any information obtained as a result of such notice cannot be used against any person supplying the report, except for a prosecution for perjury or giving a false statement.

Section 305.—Removal of Discharged Oil

This section directs the President to remove or arrange for the removal of spills of harmful quantities from offshore facilities and appropriate vessels, unless he finds that the owner or operator will do so properly and expeditiously. Clean-up operations are to be conducted, to the greatest extent possible, in accordance with the National Contingency Plan established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act. Money in the revolving account can be drawn in order to pay promptly for all clean-up costs incurred by the government in removing or minimizing damages caused by an oil discharge.

Section 305 corresponds closely to similar provisions in the Federal Water Pollution Control Act, which currently governs federal clean-up of oil spills of offshore facilities within state waters, but not on the OCS. The intent of this section is to extend the existing program to discharges on the OCS. Although the section places federal clean-up responsibility nominally with the President, it is understood that the Coast Guard would administer this provision.

In addition, this Section allows the President to pay states immediately for any clean-up expenses as they accrue. The intent of this Sec-

tion is to enable states to obtain reimbursement from the federal government for their reasonable and actual clean-up costs. Although other Sections of this Title provide that states would be entitled to seek such reimbursement directly from the fund, some states have indicated that they need the assurance of full and immediate reimbursement, as would come from the President more quickly than from the fund, in order to commit state funds to cleaning up oil spills.

Section 306.—Duties and Powers

This section outlines the responsibilities and the powers of the Secretary of Transportation in administering this Title. The Committee intends that such duties, responsibilities and powers be delegated to the Coast Guard.

The Secretary is to administer and maintain the fund, to establish regulations and provide for the fair and expeditious settlement of claims, to provide for public access to information related to this Title, to submit an annual report to the Congress, and to perform other functions that are prescribed by law.

The Secretary can utilize the personnel or services of any government agency, whether federal, state or local, or of any other organization, can issue and amend rules and regulations, can conduct investigations, can obtain information and hold meetings or public hearings, can enter into contracts, agreements, or other arrangements for the acquisition of material, information, or other assistance, and can issue and enforce appropriate legal orders during proceedings.

Section 307.—Recoverable Damages

If real or personal property is damaged or destroyed, the owner may recover the value of the loss or damage as of the time of injury, the cost of restoring, repairing, or replacing such property, any decline in value of such property, and any loss in income during repair, restoration or replacement.

The scope of this section includes recovery for costs incurred by private parties in removing or attempting to remove discharged oil, and in reducing or mitigating, or attempting to reduce or mitigate, damages to real or personal property. It is intended that property owners will only seek compensation for replacement costs when they cannot otherwise restore or repair their property.

If real or personal property or natural resources are damaged or destroyed by an oil discharge, recovery is also allowed for loss of income or impairment of earning capacity if the claimant derives at least one-fourth of his annual earnings from activities which make use of the property or resources which have been damaged or destroyed. Recovery is limited to losses incurred during a one-year period. This covers businesses that do not own property or resources affected by an oil spill, but whose income depends upon the ability of them or their customers to use such property or resources. Among the possible claimants under this subsection are fishermen in cases where fish are polluted or killed by an oil spill, and hotel and restaurant owners and employees in resort towns which lose business because of an oil spill. The term "income" is used in this subsection to include wages, earnings, or profits, and is not intended to mean net income or net profits. A hotel or restaurant owner could recover lost income that would have paid for his employees' wages or salaries, as well as his own,

among other costs. In such cases, the owner would be required to distribute such lost wages or salaries to his employees.

If natural resources are damaged or destroyed by an oil discharge, federal or state governments may recover the costs and expenses of restoring, repairing, or replacing such resources. Replacement costs and expenses would only be recovered if it is impossible to otherwise restore or repair the resources. The Committee anticipates that federal or state governments would seek recovery when oil damages or destroys public beaches, marshlands, wetlands, fisheries, flora, fauna, wildlife, and other natural resources.

Finally, if real or personal property is damaged or destroyed, the federal government or any state or local government may recover any related lost tax, royalty, rental, or net profit share revenue. Recovery is limited to revenue losses incurred during a one-year period.

Section 308.—Clean-up Costs and Damages

This section provides for unlimited liability for clean-up costs, and limited liability for damages, to be borne by the owners and operators of offshore facilities and vessels.

Subsection (a) holds the owner and operator of an offshore facility or vessel which discharges oil to be jointly and severally liable, without regard to fault, for the full costs of cleaning up the discharge. This subsection would put into positive law a similar requirement currently in Interior Department regulations (OCS Order 250.43(b)). It would extend that requirement of unlimited cleanup liability to vessels transporting oil directly from offshore facilities. The existing regulation, which has been in effect since shortly after the Santa Barbara spill in 1969, applies to OCS facilities only.

Existing safeguards should not be weakened for development of the possibly riskier frontier areas. The oil industry has indicated its intention to clean up spills immediately, and has established clean-up cooperatives to keep clean-up equipment near offshore drilling sites. The Committee intends this subsection to serve as an additional incentive to encourage owners and operators not only to commence clean-up operations at once, but also to carry such operations through to completion. However, if any federal, state or local official or agency acts to clean up an oil spill, the owner and operator will be required to pay all such clean-up costs. Any clean-up costs incurred by third parties would be considered damages under section 307 and an owner and operator would be liable for such damages in accordance with subsection (c) of this section.

Subsections (b), (c) and (d) provide that the owner and operator of an offshore facility or vessel are jointly and severally liable, with limited exceptions, for damages resulting from a discharge. Such liability is absolute unless the owner or operator can prove, and show to what extent, the spill resulted from (1), an act of war; (2), the negligent or intentional act of a third party, including a government entity; or (3), an act of God. The defense for acts of God does not include poor weather conditions or any case where the owner or operator could have reasonably avoided exposure to the "natural phenomenon of an exceptional, inevitable, and irresistible character."

The liability of owner and operator of an offshore facility for damages is limited to \$35 million and the liability of an owner and oper-

ator of a vessel for damages is limited to \$150 per gross registered ton of the vessel. These limits are to be increased in accordance with the rate of inflation. These limits do not apply if (1), the damages resulted from gross negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge; or (2), if the discharge resulted from a violation of applicable safety, construction or operating standards or regulations.

The intent of these subsections is to require the owner and operator to pay all of the public clean-up costs associated with that discharge, plus up to the stated amounts in damages caused by the discharge. In cases of gross negligence or willful misconduct, or violation of applicable regulations, the owner and operator would be liable for all clean-up costs and all damages associated with the spill. If a consortium or group of companies owns or operates an offshore facility or vessel, the liability limit would apply to the consortium or group. The liability of each member would be in proportion to each member's participation in the consortium or group.

The Committee views the provision regarding unlimited liability for damages in certain cases as an important part of this section and a significant improvement upon existing oil spill liability law. Both the Federal Water Pollution Control Act (section 311(f), 33 U.S.C. 1321(f)) and the Deepwater Port Act (section 18(d), 33 U.S.C. 1515 (d) and (e)) deny the spiller the right to limit his liability if the spill resulted from gross negligence or willful misconduct within the privity and knowledge of the owner or operator.

This section strengthens previous provisions in two ways. First, it extends the gross negligence and willful misconduct standard directly to the person in charge. Although gross negligence or willful misconduct must still be proven, it need no longer be traced to the owner or operator. When gross negligence or willful misconduct actually causes spills, the person in charge is much more likely than the owner or operator to have been responsible for, or at least knowledgeable of, such behavior. Second, the section denies limitation of liability if the discharge results from a violation of applicable safety, construction, or operating standards or regulations. The intent of this provision is to encourage owners and operators of offshore facilities to comply with such standards and regulations. The imposition of unlimited liability in cases where spills result from safety violations is designed to assure early compliance with various standards and regulations, and thus reduce administrative expense.

Subsection (e) deals with subrogation. If an owner or operator of an offshore facility is held liable for the costs of a spill caused by the unseaworthiness of a vessel or the negligence of the owner, operator, or person in charge of a vessel, the owner or operator of the facility is subrogated to the rights of any person entitled to recover damages from the owner, operator or person in charge of the vessel. The owner or operator of the facility can assume the legal rights of someone who is injured by the vessel's owner, operator, or person in charge.

Similarly, when the owner or operator of a vessel is held liable for the costs of a spill caused by the negligence of the owner, operator, or person in charge of an offshore facility, the vessel's owner or operator is subrogated to the rights of any person entitled to recover damages from the owner, operator, or person in charge of the facility. The

owner or operator of the vessel can sue the owner or operator of the facility.

The liability provisions of this Title do not affect or limit the rights of an owner or operator of an offshore facility or vessel, or the fund, may have against any third party who caused, whether solely, or partially, an oil discharge. An owner, operator, or the fund, can proceed against a third party when the owner, operator or the fund pays the costs of a spill which was actually caused by the third party. The extent of the third party's liability would depend on whether he had solely caused the spill or whether he had contributed to its taking place.

Section 309.—Disbursements from the Revolving Account

Money from the revolving account in the Treasury to the Fund is available only for (1), administrative and personnel expenses; (2), for public costs incurred in cleaning up an oil discharge, whether pursuant to this Title or any state or local law, (3), private clean-up costs of an owner or operator when the discharge is caused solely by an act of war or by negligence on the part of the federal government in establishing and maintaining aids to navigation and (4), for all damages not paid by the owner or operator pursuant to this Title. The Fund would compensate claimants for damages if the owner and operator denies liability or that the spill was from their facility or vessel, if the owner or operator is exempt from liability because of an act of war, acts of God, or intentional or negligent acts of third parties, if the owner or operator has not reached a settlement with the claimant; or if the owner or operator has reached the liability limit. In addition, the Fund would provide compensation in cases where the spiller has not been identified. It is the intent of the Committee that the Fund provide full and complete compensation for all damages caused by oil discharges from offshore facilities and vessels.

However, the Fund is not liable or responsible for any of the costs of or damages to a claimant which were negligently or intentionally caused by such claimant. Whenever the Fund compensates a claimant, it acquires all legal rights of the claimant to recover clean-up costs and damages from the person responsible for the discharge. For example, if the owner and operator cannot reach a settlement with the claimant within sixty days pursuant to section 313 of this Title, and the Fund then reaches a settlement with the claimant, the Fund acquires the claimant's rights to recover damages from the owner and operator. Subsection. (b) explicitly directs the Fund to diligently pursue recovery for any such subrogated rights.

In any claim or action by the Fund against an owner, operator, or other person providing financial responsibility for an owner or operator, as for example in the case where the Fund has compensated a claimant for damages caused by a spill for which an owner and operator are liable, and the Fund then seeks reimbursement from the owner and operator, the Fund is to recover both the full amount it has paid to the claimant or to a government entity which undertook clean-up operations, and interest on that amount, except for those amounts for which there is a valid defense. Interest is to be computed at the existing commercial interest rate, and the Coast Guard in ad-

ministering the Fund is expected to publish guidelines for the computation of such rate. Interest is to be charged from the date upon which the request for reimbursement was issued from the Fund to the owner, operator, or person providing financial responsibility, to the date upon which the amount is actually paid by the owner, operator, or other person to the Fund. The imposition of an interest charge upon delayed reimbursement will encourage the owners and operators of offshore facilities and vessels, and their insurers, to arrange expeditious settlements with the Fund. Experience with the Pollution Fund, established pursuant to the Federal Water Pollution Control Act, indicates that, in the absence of such an incentive, the government gets involved in lengthy, costly and sometimes frivolous negotiations and litigation with the liable parties.

A later section states that the revolving account for the Fund is to be financed by an initial appropriation and then a three cents per barrel fee. The fee need only be collected until \$100 to \$200 million is in the account. Normally, the Fund would maintain an account balance sufficient to cover most spills. However, it may be possible that an extensive catastrophic spill might occur that would involve costs and damages beyond the amounts in the account. In such a situation, either while the account is being built up, or if the \$100 to \$200 million amount is insufficient, the Fund may borrow all necessary amounts to pay any clean-up costs and damages for which the Fund is liable; up to \$500 million at any one time.

The Fund may issue notes or other obligations to the Secretary of the Treasury, according to terms and conditions prescribed by the Secretary of the Treasury. Borrowed monies are to be deposited in the revolving account, and redemptions of notes or other obligations issued to the Fund are to be made from the revolving account.

The Secretary of the Treasury is to determine an appropriate interest rate, based upon the current average market yield on outstanding marketable obligations of the U.S. of comparable maturities during the month preceding the borrowing. The Secretary of the Treasury is authorized to purchase the Fund's notes or other obligations by using as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under that Act are extended for this purpose. In addition, the Secretary of the Treasury may sell any notes or other obligations which he purchased pursuant to this section. All purchases, redemptions, and sales of such notes or other obligations are to be treated as public debt transactions of the U.S.

This borrowing provision enables the Fund to pay all costs and damages as soon as possible. The concept of authorizing the Fund to borrow money in such cases in order to provide unlimited coverage was first introduced in the Deepwater Port Act, section 18(f)(3) (33 U.S.C. 1517(f)(3)). This section improves upon that provision by outlining the borrowing procedures in greater detail.

Section 310.—Fee Collection; Deposits in Revolving Account

This section provides for the collection of a fee to establish and maintain the Fund and the deposit of any amounts collected by the Fund. The Secretary of Transportation is to levy and collect a three-cents-per-barrel fee from the owners of oil produced from the OCS.

The fee is to be levied when the oil is transferred from a well to a pipeline or vessel. The Committee intends that the owner from whom the fee is collected be the owner of the oil just prior to its transfer from the well to the pipeline or vessel. The three-cents-per-barrel fee may only be levied once upon any oil.

The fee is to be collected until the balance in the revolving account reaches at least \$100 million. Afterwards, the Secretary is to maintain the account at a level between \$100 million and \$200 million. To do so, he may suspend and reinstate the fee from time to time, or he may periodically modify the amount of the fee.

All fees, reimbursements, fines, penalties, investments, and judgments pursuant to this Title are to be deposited in the revolving account, and are to be included in the calculation of the amount in the account. If the amount in the account exceeds \$200 million, all sums in excess are to be deposited in the U.S. Treasury and credited to miscellaneous receipts.

Any money not needed for the purposes of the Fund and its administration are to be prudently invested in income-producing securities issued by the United States. The Secretary of the Treasury must approve such investments. It is expected that such investments will be made on a short-term basis, in order to provide the Fund with maximum liquidity in order to respond effectively to any unexpectedly large or any unexpectedly high frequency of oil spills.

Section 311.—Financial Responsibility

This section requires owners or operators of offshore facilities and vessels to demonstrate adequate financial responsibility so to be able to cover the liability requirements of this Title.

The owner or operator of an offshore facility is to establish and maintain evidence of financial responsibility based on the capacity of the facility and "other relevant factors". Such factors should include, although need not be limited to, liability requirements, the frequency with which the facility handles OCS oil, the previous experience of the facility with regard to oil discharges, and the size and assets of companies and corporations affiliated with the owner or operator. The President is to establish rules and regulations governing the establishment and maintenance of evidence of financial responsibility shown by insurance, surety bonds, self-insurance, or other methods.

The owner or operator of a vessel is to provide evidence of financial responsibility to the Federal Maritime Commission. Financial responsibility must be based upon liability requirements and the tonnage of the vessel. An owner or operator who owns, operates or charters more than one vessel need only provide evidence of financial responsibility for the largest of his vessels. Financial responsibility may be proven with insurance, surety bonds, self-insurance, or other methods.

Offshore facilities are not presently required to demonstrate financial responsibility for liability expenses. However, under the Federal Water Pollution Control Act, the President has designated the Federal Maritime Commission to administer the financial responsibility requirement for vessels. It is expected that the President will also designate the Maritime Commission to administer the financial responsibility requirement for offshore facilities pursuant to this section,

as the Commission has gained considerable experience in working with private insurance organizations. If the President or the Federal Maritime Commission determine that another agency could administer this section more effectively, however, it would still be consistent with this section of this Title.

The purpose of this section is to extend the existing requirement for evidence of financial responsibility to offshore facilities, in addition to vessels. The requirement was initially imposed upon vessels in the Federal Water Pollution Control Act because vessels might spill oil and then sail beyond U.S. jurisdiction. Furthermore, many vessel owners incorporate each vessel separately and, if the vessel is seriously damaged or destroyed in an incident, the vessel owner would lack sufficient assets to meet legal liabilities. The effect of the Federal Water Pollution Control Act requirement for proof of financial responsibility has been to expand the pollution coverage offered by the private insurance community. The Committee expects this subsection to have a similar effect upon the pollution coverage available to offshore facilities. Currently, in the absence of such a requirement, some offshore operators do not have insurance coverage for oil spill liability. As financial responsibility is now to be required, the capacity of the insurance market in this area will necessarily increase. Whereas a standard commercial insurance policy covering pollution from offshore facilities currently contains a \$22 million limit, such coverage might now expand to \$45-50 million.

Direct action by a claimant on the Fund is allowed against the surety, insurer, or other person providing financial responsibility for an owner or operator. Thus, a claimant or the Fund can seek compensation directly from an insurer, for example, if an owner or operator refuses to meet his liability requirements or does not provide compensation for any other reason. Section 311 of the Federal Water Pollution Control Act, which established the key precedent for oil spill liability legislation, contains a similar direct action provision.

A fine of up to \$25,000 is to be imposed upon anyone who violates the provisions of this section or any regulations issued pursuant to it.

The President is to increase the liability limits and corresponding financial responsibility requirements annually, equal to the annual percentage increase in the wholesale price index. The intent of this provision is to prevent the liability limits and financial responsibility requirements from becoming obsolete as inflation pushes up the costs of oil spills as well as the limits of insurance policies. The Water Pollution Control Act establishes liability limits of \$100 per gross ton or \$14 million for vessels in 1970, when insurance policies were generally limited to about \$14 million. Since that time, insurance coverage has expanded to a current level of \$25 million, although the \$14 million limit remains fixed in the law. The Committee believes that this provision will avoid such discrepancies by escalating liability limits and financial responsibility requirements along with inflation. The wholesale price index was selected, after advice from the General Accounting Office, as a reasonable indicator of inflation, particularly in relation to spill clean-up costs and damages.

Although a later section of this Title (Section 322) specifically provides that no state law as to requirements or liability as to dis-

charges, the Committee was concerned that an owner or operator should not be required to tie up large amounts of capital by having to doubly insure, with both a state and the federal government, as to any possible discharge. Therefore, the non-preemption provision is specifically limited by subsection (f) of this section which provides that if an owner or operator of an offshore facility or vessel provides evidence of financial responsibility to the federal government under this section, he cannot be required to provide similar evidence for the same facility or vessel to any state government. States are required to accept evidence of compliance with the federal requirement as satisfactory compliance with their state-level financial responsibility requirement for the same facility or vessel.

Section 312.—Trustee of Natural Resources

The Secretary or an authorized representative of any state is to act as trustee of the natural resources. This provision enables federal or state governments to make claims on behalf of the public for damages to natural resources. The section stipulates that compensation received is to be used to restore, rehabilitate, or acquire the equivalent of the damaged resources. Consistent with section 307 of this title, such compensation may only be used for acquisition purposes if restoration and rehabilitation of the damaged or destroyed resources is impossible or can only be undertaken with a low possibility of a significant amount of success.

Section 313.—Claims Procedure

This section establishes the procedures by which claimants can recover for clean-up costs and damages. In general, the claimant is to seek payment from the owner or operator or his insurer. If liability is denied, or if no settlement can be reached in sixty days, the claimant can seek payment from the Fund. Any amounts paid to the claimant from the Fund can be recovered, up to the liability limits and with the liability exceptions, from the owner and operator.

The Secretary of Transportation is directed to prescribe and periodically amend regulations for the filing, processing, settlement, and adjudication of claims for clean-up costs and damages caused by oil discharge from offshore facilities and vessels.

The section specifically describes the step-by-step procedure for resolution and payment of claims. Once a discharge is alleged, the Secretary is to promptly notify the owner and operator of an offshore facility or vessel, which allegedly discharged oil, of such allegation. The owner or operator may deny the allegation or deny liability for damages within five days of receiving notification from the Secretary. If such denial is in dispute, the owner and operator may seek administrative adjudication, and then judicial review, and the claimant may seek payment from the Fund and allow the Fund to proceed against the alleged violator, up to the limits of liability.

If the owner and operator does not deny the allegation of a spill or liability for damages, the owner and operator or the person providing financial responsibility is required to advertise in any area where damages may occur the procedures under which claims may be presented to them. It is expected that such advertisement will involve, as appropriate, advertisements in local newspapers, announce-

ments on local radio and television programs, and posters in public buildings such as the post office and town hall. The text of such advertisements is to be published by the Secretary in the *Federal Register*. If the owner, operator, or person providing financial responsibility does not advertise as required, the Secretary is directed to do so at the expense of the owner, operator, or person providing financial responsibility.

If the owner or operator has denied an allegation of a spill or liability for damages, the Secretary is required to advertise the procedures under which claims may be presented to him for payment by the Fund. Advertising is expected to be as suggested above, including publication in the *Federal Register*. Advertisement must begin within fifteen days after the Secretary receives notification of an oil discharge. It is to continue for at least thirty days, and to be repeated at least once each quarter for the following five years.

All claims must be presented, whether to the owner, operator, person providing financial responsibility, or the Secretary, within one year after the damages are discovered and within five years after the advertising is commenced. In the case of damages caused by chronic, low-level discharges of oil, when there might be no advertisement, claims must be presented within one year after the damages are discovered. All damage claims are to be on one form if such claims are presented to the Secretary for payment by the Fund. The form may be amended to include new claims as they are discovered. However, damages which are known or reasonably should be known are deemed waived if they are not included in the claim when compensation is made.

If the owner and operator does not deny liability, all claims must be presented first to the owner and operator and/or to the person providing financial responsibility. The recipient of the claim request must inform the Secretary of Transportation of the claim and the claimants of his rights under this Title.

Claimants can present claims directly to the Secretary if an owner or operator or insurer (1) has denied an allegation of a discharge or liability for damages; (2) submits a written offer for settlement which is rejected by the claimant; or (3) has not settled the claim by agreement with the claimant within sixty days. The sixty-day period begins from the date on which the claim was presented or on which advertising was commenced, whichever was later. Such non-settled claims are to be transmitted to the Secretary, together with any supporting documents within two days after a request from the claimant. Such claims are then considered to be presented to the Secretary for payment by the Fund.

The purpose of this provision is to provide for expeditious settlement of claims if the claimant is not obtaining satisfaction from the owner, operator, or person providing financial responsibility. The owner, operator, or person providing financial responsibility, is to notify the claimant of his rights, which includes the right to reject an offer.

The Secretary is to utilize the facilities and services of private insurance and claims-adjusting organizations in administering this section, and may contract to pay compensation for such facilities and services. Such contract need not comply with section 3709 of the Revised Stat-

utes if the Secretary shows that advertising is not reasonably practicable. The Secretary must approve payment of any claim exceeding \$100,000, or two or more claims from the same claimant exceeding \$200,000. Such approval is to be ministerial in nature and does not call for discretionary judgments on the part of the Secretary. The Secretary is only to use federal personnel to administer this section in extraordinary circumstances in which private organizations' services and facilities are inadequate, whether for lack of sufficient expertise, lack of sufficient personnel or materials, or other reasons.

In any dispute involving a claim that had been presented to the Secretary for payment by the Fund, the claimant can submit the matter to the Secretary for adjudication if the Secretary has denied liability for a claim, or if he has not settled the claim by agreement with the claimant within ninety days. The ninety-day period begins when the claim is presented to the Secretary for payment or when advertising was commenced, whichever occurred later. This provision does not provide for the settlement of claims, but for the adjudication of matters in dispute.

The owner, operator, or person providing financial responsibility may submit the following matters in dispute for adjudication: (1) a denial of an allegation of a spill or of liability for damages; (2) an objection to unlimited liability for damages because of gross negligence, willful misconduct, or failure to comply with applicable regulations; and (3) the amount of any payment, whether made or proposed, by the Fund if such payment may be recovered from the owner, operator, or person providing financial responsibility.

Disputes submitted to the Secretary of Transportation are to be referred to a hearing examiner, appointed under section 3105 of Title 5 of the United States Code. The examiner is required to adjudicate the case promptly and render a decision in accordance with section 554 of Title 5 of the Code. The hearing examiner can administer oaths and subpoena the attendance and testimony of witnesses and the production of books, records, and other pertinent evidence for the purposes of any hearing. The hearing is to take place in the judicial district within which the disputed matter occurred. If the disputed matter occurred within two or more districts, the hearing can take place in any of the affected districts. If it occurred outside of any district, the hearing should take place in the nearest district.

If the hearing examiner's decision is not submitted for judicial review, the Fund must promptly disburse the award. The Secretary cannot review the hearing examiner's decision.

Section 314.—Judicial Review

Anyone who suffers legal wrong or who is adversely affected or aggrieved by the decision of a hearing examiner can seek judicial review of the hearing examiner's decision within sixty days after it is made. Judicial review may be sought either in the United States Court of Appeals for the circuit in which the damage occurred (or, if it occurred outside of any circuit, in the Court of Appeals for the nearest circuit), or in the Court of Appeals for the District of Columbia.

Reasonable attorneys' fees and court costs are to be awarded to the claimant if the discharger or the Fund seeks judicial review and the hearing examiner's decision is affirmed.

Section 315.—Class Actions

The Attorney General can act on behalf of any group of damaged citizens which the Secretary finds will be more adequately represented as a class than as individuals. Payments to the group are to be distributed to all of its members.

Any member of a group can initiate a class action suit if the Attorney General does not do so within ninety days after an oil discharge. Failure of the Attorney General to bring a class action suit should not affect or prejudice any class action suit brought by a member of the class. If a class includes more than 1,000 members, the requirement for public notice established by Rule 23(c) (2) of the Federal Rules of Civil Procedure will be fulfilled by publishing notice of the class action in the *Federal Register* and in local newspapers serving the damaged parties.

Section 316.—Representation

This section provides for representation of the Fund for claims under this title. The Secretary is to request the Attorney General initially to represent the Fund. If the Attorney General does not notify the Secretary that he will institute court actions or otherwise represent the fund within "a reasonable time", the Secretary is directed to appoint attorneys to do so.

Section 317.—Jurisdiction and Venue

Original jurisdiction for all controversies arising under this title is to be in the United States district courts. The federal district courts are to have original jurisdiction regardless of the citizenship of the parties or the amount in controversy. Venue shall lie in the district where the damage occurred (or, if the damage occurred outside of a district, in the nearest district), or in the district where the defendant resides, may be found, or has its principal office. The Fund is designated a resident of the District of Columbia for the purposes of this section.

Section 318.—Access to Records

This section provides for the maintenance of records and for government access to them. Everyone responsible for contributing to the Fund must keep records and furnish information which the Secretary calls for in regulations. The Fund is to collect fees pursuant to this Title at such times and such manner as the Secretary prescribes in regulations.

The Secretary is to have access to any books, documents, papers, and records of any person responsible for contributing to the Fund. The Secretary is granted access to such information for the purposes of regularly examining and auditing the collection of fees.

The Comptroller General is to also have access to the books, documents, papers, records, and other information of any person required to contribute to the Fund, and of the Fund.

Section 319.—Public Access to Information

The public is to be allowed to inspect and reproduce any communication, document, report, or information transmitted between any federal official and any person regarding liability and compensation for damages resulting from an oil discharge covered by this title. Exempted from this public disclosure requirement is any information

covered by subsection (b) of section 522 of title 5 of the U.S. Code, and any information which is otherwise legally protected from public disclosure.

Section 320.—Annual Report

Section 320 requires the Secretary of Transportation to submit an annual report to Congress within six months after the end of each fiscal year. The report is to include information regarding the administration of the Fund during the fiscal year just completed, a summary of the management and enforcement activities of the Fund, and recommendations for legislative amendments to this title. Such amendments are to be designed to improve the management of the Fund or the administration of the liability provisions of this title.

Section 321.—Authorization of Appropriations

Section 321 authorizes appropriations for the implementation of this Title. Administrative funds of \$10 million for the first fiscal year, \$5 million for the second fiscal year, and another \$5 million for the third fiscal year are authorized. These funds are to be used to implement the various provisions of this Title and to establish and institute the procedures for clean-up, notification, damage settlement, and other activities necessary to implement this title. These funds are also to be used for the administration of the Fund itself until the Fund collects enough money to pay its own administrative costs.

Also authorized to be appropriated to the Fund are such amounts as may be periodically necessary to implement the provisions of this Title. These amounts are to pay for contracts, disbursements, issuance of notes and other obligations. The authority to spend money under various provisions of this title is effective only if provided for in appropriation Acts.

The appropriation section has been carefully drafted after consultation with the Budget and Appropriations Committees of the House, and is designed to comply with the requirements of the Congressional Budget Act of 1974. The Committee intends that the initial appropriations will set in operation the administrative mechanisms necessary to implement this title. Once the Fund builds up a substantial balance, it should cover its own administrative expenses, as well as any other administrative expenses necessary to implement this title. The Committee also intends that the appropriations legislation covering the Fund and the revolving account will provide for the transactions specified in this Title in language without fiscal year limitation. One appropriations bill should provide for the collection of the fee, the deposit of the fee in the revolving account, the availability of money in the revolving account to the Fund for disbursement, the issuance of notes and other obligations by the Fund, the placement of penalties, fines, reimbursement, investments, judgments, and other sums received under this title in the revolving account, and for any other transactions which may be necessary to fulfill the purposes of this Title. The appropriations bill need not contain a monetary figure, but should provide for these transactions without fiscal year limitation.

Section 322.—Relationship to Other Law

With the exception of requirements as to financial responsibility, this Title does not preempt the field of liability and does not prevent

any state from imposing oil spill liability laws or additional requirements. Any state may impose requirements or liability for oil spills causing clean-up costs or damages within its jurisdiction. The issue of preemption was one upon which the Committee focused considerable attention during the consideration of this complex Title. Although not desiring to place unnecessary burdens upon the owners and operators of offshore facilities and vessels, the Committee believes that the minor burdens imposed by this section are far outweighed by the substantial benefits to states in enacting and enforcing their own oil spill liability laws. While the Committee labored to design what it hopes will be a useful and effective federal law in this area, it recognizes that states have played, and may continue to play, an important and necessary role in clean-up operations, claims assessment, and imposition of stringent liability requirements, among other activities. It also recognizes that state officials may be more qualified to evaluate damages in unique local areas than federal officials, and that citizens may prefer to approach a state fund rather than a more remote federal one. Furthermore, as a matter of public policy, the Committee did not want to preempt existing, workable state liability schemes with a new federal scheme, as excellent as it may be. It is the expectation of the Committee that as the new federal scheme created by this Title is implemented and gets into full-scale operation, the states will find less and less of a need to enforce their own liability laws.

Claimants cannot doubly recover and thus receive compensation for the same damages or clean-up costs under both federal and state law. Anyone receiving compensation pursuant to this Title cannot receive compensation for the same clean-up costs or damages pursuant to any state or other federal law. Anyone receiving compensation pursuant to any other federal or state law cannot receive compensation for the same clean-up costs and damages pursuant to this title.

TITLE IV—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT OF 1972

The Committee recognized that one of the concerns continually expressed by witnesses throughout its hearings was the need for aid to state and local governments, for any possible temporary or permanent adverse effects as a result of OCS activities. The Committee also recognized that the House of Representatives passed on March 11, 1976 the Coastal Zone Management Act Amendments of 1976 in an overwhelming vote (370-14). Many of the Members of the Ad Hoc Select Committee on the Outer Continental Shelf were also Members of the Oceanography Subcommittee of the Merchant Marine and Fisheries Committee which held hearings on the Coastal Zone Management Act Amendments. Other Members of the Ad Hoc Committee were Members of the full Merchant Marine and Fisheries Committee which unanimously reported the Coastal Zone Amendments Act to the House. Almost all Members, including those from the Interior and Insular Affairs Committee and the Judiciary Committee, have supported a law providing for funds to affected state and local governments. To reassert the support of the Members of the Committee, and of the House, for the provisions found in the Coastal Zone Management Act Amendments of 1976, and to strongly indicate that the Act should be signed by the President and enacted into law, so as to pro-

vide adequate funds to any affected state and local government, the Committee incorporated those sections of the Coastal Zone Management Act Amendments of 1976 that dealt with funding as section 401 of this act.

An explanation of those provisions can be found in the Report, Together with Additional Views, on H.R. 3981, Report 94-878, dated March 4, 1976. Relevant portions of that Report are included here to provide an explanation of the provisions of the incorporated sections.

Paragraph (1) of section 401 amends section 304 of the Coastal Zone Management Act of 1972 by providing new definitions for "*Outer Continental Shelf Energy Activity*", "*energy facilities*", "*public facilities and public services*", "*local government*", "*net adverse impacts*", and "*coastal energy activity*".

New subsection (j) defines "*Outer Continental Shelf Energy Activity*" and is used in three subsections of H.R. 3981. Section 308(a)(1) stipulates the six criteria on which the OCS payment portions will be based for each coastal state; the last two involve the number of persons directly employed in and the amount of onshore capital investment made necessary by "outer continental shelf energy activities." Section 308(a)(4) specifies the purposes for which the OCS payments may be used by the recipient states and, in this regard, makes reference to the provision of public services and public facilities or the amelioration of the unavoidable loss of ecological or recreational resources resulting from "*Outer Continental Shelf Energy Activity*". Section 319(b) [Section 300(b)] stipulates that the Federal government may guarantee bonds or other evidences of indebtedness issued by state or local governments when the revenues which accrue from such issuance are to be used for public services and public facilities made necessary by "outer continental shelf energy activity".

The first part of the definition makes reference to the exploration, development or production of oil and gas resources from the Outer Continental Shelf. "*Outer Continental Shelf*" refers to those lands lying beyond state territorial waters owned and managed by the Federal government as defined in the Outer Continental Shelf Lands Act of 1963 and reaffirmed by *United States vs. Maine*, et al.

The term "*exploration*" refers to the process of searching for OCS oil and gas, including geophysical surveys and the drilling of exploratory and delineation wells. "*Developments*" means those activities which take place following the discovery of oil and natural gas and are designed to produce such resources. "*Production*" refers to those activities which take place after the successful completion of a development well and are designed to transfer the resources to shore for commercial use.

Energy facilities made necessary by outer continental shelf exploration or development are also included within the definition. The types of facilities involved are specified in the next definition (k) with the qualification in (j) that they be "made necessary" by OCS activity. In other words, a refinery which may be located or operated in the coastal zone and which does not process oil or gas from the outer continental shelf would not be included within this definition. The criteria for determining whether a particular facility is "made necessary" by OCS exploration or development should be specified by the Secretary of Commerce when he promulgates regulations for the administration of the amendments to the Coastal Zone Management Act. It is the intent of the Committee that the main purpose of the location, construction, expansion, or operation of the facility should be to support or facilitate OCS exploration or development. If a facility specified in subsection (k) is only partially used for OCS activity, grant payments should be made on the basis of proportional calculations to the extent such facility engages in operations made necessary by OCS activity.

New subsection (k) defines "*energy facilities*". This definition is applicable to four subsections of H.R. 3981. Section 305(b)(8) adds an energy facility planning process of the program development work of the states. Section 306(c)(8) of the Act is amended by adding the requirement that in considering the national interest in the planning for and siting of such facilities and energy facilities, a coastal state must give consideration to any energy plan or program developed by an interstate entity which is established by section 300. Section 308

(b) (1) authorizes planning grants to the states to study and plan for the socioeconomic and environmental effects of energy facilities which are located or operated in or which will significantly affect the coastal zone. Finally, section 318 (Limitations) restricts any Federal official from interceding in state land or water use decisions including but not limited to the siting of energy facilities.

Two types of energy facilities are contained within this definition. First are those which are or will be directly used in activities designed to extract and produce oil and gas resources. Second are facilities which are or will be used "primarily for" the manufacture or production of facilities which will be "directly involved" in oil and gas extraction and development activities. A number of such facilities are enumerated in the definition but the enumeration is not exclusive.

Through the rules and regulations promulgated to carry out these amendments, the Secretary of Commerce should establish more specific criteria on how such terms as "used primarily" and "directly used" will be implemented. It is the intent of the Committee that the energy facilities included within the definition should be those which are actually engaged in oil and gas extraction, conversion, storage, transfer, processing, or transporting. Additionally, the facilities used for the manufacture, production or assembly of equipment directly involved in energy resource extraction or production must affect a "substantial" geographical area or large numbers of people. Again, the precise determination of this must be made in the Commerce Department's regulations. If a facility is only partially used for the purposes stated in the definition, proportional calculations about the impact of such a facility should be made in the determination of a grant under section 308(b).

New subsection (1) defines "public facilities and public services". Direct reference to public facilities and public services is found in the definition of "net adverse impacts" in section 304(n), the automatic OCS payments in section 308(a) (4) (A) and (B), and in the state and local bond guarantee provision in section 319(b). By reference, the provision of these facilities and services is included within the subparagraph authorizing the allocation of OCS payments to local governments in section 308(a) (7), the impact grants based on net adverse impacts authorized in section 308(b) (2), and the allocation of such impact grants to local governments in section 308(f).

The definition means any services or facilities financed either entirely or partially by state and local governments. A number of such facilities and services are enumerated but the list is not exclusive. Other facilities and services, for example those related to environmental consequences of energy activity, are to be included if they are necessitated by population increases resulting from energy resource extraction or production activity or required to facilitate energy resource development.

New subsection (m) defines "local government" as a political subdivision of a coastal state if the subdivision has the authority to levy its own taxes or if it provides any public service which is financed in whole or in part by taxes.

New subsection (n) defines "net adverse impacts" and was contained in a substitute amendment proposed by Representatives Murphy and du Pont and accepted by the full Committee during mark-up. This concept had not been defined in the Senate Bill (S. 586), nor in the original version or the September 29 or October 18 Committee Prints of H.R. 3981. Because of the importance to the administration of the impact grants under section 308(b) and some confusion which surrounded it, the Committee felt it appropriate to specify this concept.

Essentially, net adverse impacts occur when the beneficial consequences of a "coastal energy activity" (defined in subsection 304(o)) are outweighed by the economical or ecological costs of such an activity. This cost-benefit calculation is to be made only on activities which occur in or significantly affect a state's coastal zone, only on consequences which are directly related and in the same general location and according to the administrative criteria specified in section 308(c).

In terms of the comparability of the consequences, it is important to note that the phrase in the definition "when weighed against the benefits of a coastal energy activity which directly offset such costly consequences" is intended by the Committee to preclude the consideration of some distant benefit in the state as an offsetting variable against a localized cost.

Two examples of net adverse impact calculations are included in the definition. First, additional or expanded public services or public facilities which are re-

quired because of coastal energy activity induced rapid and significant population changes or economic development would be the "costs" in the net adverse impact calculation. The generation of taxes through the state and local government's usual and reasonable revenue raising structure—taxes which will accrue from the population changes or economic development—would be the "benefits". The availability of other Federal funds which could be used to offset the costs, including the OCS payments authorized in subsection 308(a), would also be considered benefits. The extent to which the "costs" exceeded the "benefits" would constitute a net adverse impact.

Second, another cost would be the unavoidable loss of unique or unusually valuable ecological or recreational resources as a result of coastal energy activity. This is intended to include not only existing resources of this nature but also those ecological or recreational areas of potentially unique value which could be endangered by the location and operation of energy facilities. In fact, it is hoped that existing ecological or recreational areas will, to the maximum extent possible, be protected from the adverse effects of coastal energy activity and that comparable replacement areas will be provided for areas unavoidably damaged.

The "benefits" would be the same as those explicated above. It should be noted that additional state and local revenues which accrue from taxes because of coastal energy activity may not be sufficient to provide the funds necessary for restoration or replacement of ecological or recreational resources. In the absence of other federal funds, including the OCS payments, to cover these "costs" a net adverse impact would result. If only part of the restoration or replacement costs are covered by other federal programs or the OCS payments, the residual "costs" would also be considered net adverse impacts.

Finally, it should be noted that subsection (n) is the definition of a concept which has been included in H.R. 3081 to assist the Secretary of Commerce in drafting regulations pursuant to this bill. For purposes of administering the impact grants authorized in section 308(b), however, the definition of net adverse impacts should be read only in conjunction with the administrative criteria specified in section 308(c).

The final new definition, subsection (o), defines "coastal energy activity." Coastal Energy Activity is distinct from "Outer Continental Shelf Energy Activity" (defined in subsection 304(j)) in that it is broader and contains most OCS-related activity within it. Subsection (o) is applicable to the impact grants authorized under subsection 308(b) and to other appropriate subsections providing the details for the administration of those grants.

"Coastal Energy Activity" means those activities and associated facilities that are necessarily located in or are likely to affect significantly the coastal zone of a state. They are limited to three particular types of energy activities and certain specified supporting equipment and facilities which are included. If a particular facility is not enumerated in the list, it is not to be included within the definition unless the coastal state affected determines that the facility has to be located and operated on its coastal zone because of technical requirements which would make such a siting unavoidable.

The second type of energy facility included relates to the transportation of liquefied natural gas (LNG), coal, or oil (whether from the OCS or not). Specifically, vessel loading docks, terminals, and storage facilities required to transport these energy sources are contained within the definition as well as conversion facilities necessarily associated with LNG processing. Finally, deep-water ports and those facilities directly associated with such ports are included. The ports are defined in the Deepwater Ports Act of 1974 (P.L. 93-627); consequently, they include only those located beyond state waters. Associated facilities including pipelines, pumping stations, service platforms, mooring buoys, and similar appurtenances located seaward of the high water mark are also included within the definition and would be located in a state's coastal zone.

It has been noted above that the concept of "coastal energy activity" is based on the premise that the activity involved is in the national interest and that the state is facilitating that interest by permitting certain activities and facilities to occur in its coastal zone, such activities being "coastal-dependent". In other words, the activities and associated facilities enumerated in the definition were considered by the Committee to be those which, by their very nature or technical requirements, mandate their location and operation in the coastal zone.

The development of this concept in conjunction with the definition of "net adverse impacts" represents the Committee's desire to achieve four difficult but

essential goals in the impact program (as distinct from the OCS payments section) : First, the provision of assistance to coastal states for their role in furthering the national interest in energy-related policy development; second, the provision of a level of such federal assistance which is commensurate only with those situations in which "costs" exceed "benefits"; third, the preservation of the comprehensive nature of the Coastal Zone Management program and the maintenance of the important planning groundwork already accomplished by the states in their program development work; and fourth, the avoidance of federal financial inducements to locate and operate unnecessary energy facilities in the fragile coastal zone.

The bill which passed out of the Oceanography Subcommittee on October 8, 1975, contained an impact fund which was OCS-specific. Although the authorization level was considerably different, the impact fund in the 2nd Committee Print was essentially the same as section 308(a) in the bill which was approved by the full Merchant Marine and Fisheries Committee.

After intensive study and deliberation, however, the Committee concluded that to limit the types of energy activities for which federal assistance would be provided to only those related to OCS exploration and development would hinder the achievement of its four goals. An OCS-specific program based on a formula method of distribution while possessing certain administrative advantages, would not provide federal assistance for all possible coastal related energy activities sanctioned by the federal government in the national interest and thus would deny aid to coastal states for their full contribution to energy-related policy development.

Such a restricted program, standing alone, would not address itself to non-OCS coastal-dependent energy activities which would be in the national interest and which would inevitably place severe pressures and perhaps incalculable costs on coastal states.

Additionally, the allocation of federal funds based on six levels of OCS activity, is simply not as precise a mechanism for providing only "necessary" assistance.

Thirdly, it was felt that to focus on only one type of energy activity would help to fragment what was intended to be a comprehensive management program for the states.

The fourth goal presented a more serious dilemma for the Committee. To reduce the encouragement of unnecessary energy facility siting in the coastal zone was clearly an advantage of the OCS payments approach. Structuring a program to provide assistance for all types of energy activities and facilities located in the zone raised difficult questions about its potential for inducing inefficient siting decisions. To resolve this issue, the Committee developed the concept of "coastal energy activity".

Based on the premise of coastal-dependency, this definition excludes oil refineries, petrochemical plants, and electric generating plants since they do not have to be in the coastal zone and might better be located elsewhere in most cases. It also provides a detailed list of the Outer Continental Shelf support activities which would be covered, to avoid possible absurd links in the supply chain that might result in impact aid being provided for a plant making items which are used for manufacturing these items for other purposes.

With this approach, then, the Committee feels that it has achieved the four goals for the impact fund section. Impact grants based on the concept of net adverse impacts and coastal energy activity in combination with the OCS formula method provides, in the judgment of the Committee, the most reasonable and efficient structure for a Coastal Energy Activity Impact program.

Paragraph (2) redesignates certain sections, and paragraph (3) adds a new section 308 on coastal energy activity impact program.

Section 308 establishes the Coastal Energy Activity Impact program. The broad guidelines of this program and some of the background of the Committee's deliberations in this subject have been discussed in the summary section and in the treatment of the applicable definitions in this section.

This section contains two of the three provisions designed to provide federal assistance to coastal states for their role in the Nation's development of its increasingly important energy policy. The third section is the provision for the federal guarantee of state and local bonds issued for OCS-related projects and programs. This part, section 319 [309], will be discussed later.

Subsection (a) of section 308 is a seven paragraph provision which establishes the bill's OCS program. In a somewhat different form, this subsection represents what the Oceanography Subcommittee approved as the bill's entire

"Coastal States Impact Fund". This particular approach emerged from those Members who were concerned about the advisability and also the ability of the Secretary of Commerce to quantify "net adverse impacts" and from those who felt that a broader program could lead to the "inducement" of unnecessary energy facilities in the coastal zone. Full Committee action resulted in a combination of this OCS allocation formula approach with the impact grants provided in subsection (b) of this section.

Paragraph (1) of subsection (a) mandates the Secretary of Commerce to make annual payments to each coastal state which experiences at least one of six specified levels of OCS activity. These levels of OCS are, in effect, the ingredients of a six-part proportional formula based on each state's level of OCS activity compared to such activity nationwide in any given fiscal year. The average of these six ratios would determine the proportion of the total amount appropriated by Congress allocated to an individual coastal state in any one year. The six criteria are as follows:

(A) The proportion of outer continental shelf acreage leased adjacent to each state versus the total OCS acreage leased in each year.

(B) The proportion of the number of exploration and development wells drilled adjacent to each state versus the total of such wells drilled on the outer continental shelf in each year.

(C) The proportion of the volume of oil and gas produced adjacent to each state versus the total volume of oil and gas produced on the outer continental shelf in each year.

(D) The proportion of the volume of oil and gas produced and first landed in each state versus the total OCS oil and gas produced and first landed in the United States in each year.

(E) The proportion of the number of persons residing in each state who are employed directly in outer continental shelf activities versus the total of such persons employed in each year.

(F) The proportion of onshore capital investment made in each state and which is required to directly support OCS energy activities versus the total of such capital investment made in all coastal states in each year.

Strictly speaking, these criteria are not intended to be descriptions of "impacts" but rather levels of OCS activity adjacent to or occurring within the coastal states. They are based on the assumption that these levels of activity will correspond to impacts which result from outer continental shelf exploration and development activity.

It should be noted that the specific activity in each criteria is that which occurs in a given fiscal year. For example, criterion (A) means the acreage leased in the fiscal year for which the calculations are made does not include acreage already under lease, (B) refers to exploration and development wells being drilled in the year under consideration—as well as new wells which are begun in that year. A well which is being drilled and which is shut down during the year should be counted during that year provided that the Secretary determines that such wells were shut down for normal reasons of production or maintenance and not to enhance the adjacent state's future proportion of this particular category. Criterion (C) means the volume of oil and gas produced adjacent to each coastal state in the fiscal year under consideration—past production levels are not to enter into the calculations. The same general premise applies to the volume of OCS oil or gas landed in each state in a particular year provided in criterion (D). Criterion (E) is a proportion of those residing in each coastal state who are directly employed in OCS activities. The number of such employees should be calculated for each fiscal year and should reflect those who are directly employed by the lessee or those persons who are either contractors or subcontractors of lessees. The final criterion (F), refers to the amount of capital investment made in each fiscal year. Again, past investment required to support OCS activity should not be counted. The Committee is aware that this criterion will be most difficult to calculate. The Secretary of Commerce should develop regulations which are designed to standardize these data as much as possible. Precise methods of determining OCS capital investment as well as definitive ways of acquiring accurate data must be established by the Secretary.

In promulgating the regulations for the administration of this OCS payment program, the Secretary is advised that it is the intent of the Committee that the listed criteria are to be measurements of activity levels resulting from outer continental shelf energy activity. Additionally, the Committee has structured these criteria to represent levels of activity which would not have occurred were it not for the OCS exploration and development work.

Section 308(a) (2) defines the term adjacency for use by the Secretary in calculating the proportions set forth in section 308(a) (1) (A), (B), and (C). The Committee wished to avoid creating disputes of section 308(a). It is intended by the Committee that the method by which adjacency is determined in this particular section be used solely for the purpose of calculating the proportions in paragraph (1) and not be construed to have application to any other law or treaty of the United States, whether retrospectively or prospectively.

The definition which was adopted by the Committee recognizes the seaward lateral boundaries which have been previously determined to apply between coastal states within the territorial limits of such states. If any such boundary has been clearly defined by interstate compact, agreement, or by judicial decree, the Secretary of Commerce shall accept such boundaries as the effective lines of delimitation between such states for purposes of this section. The Secretary would then extend those boundaries seaward from the limit of the territorial sea to the limit of the outer continental shelf using the same principles of delimitation originally used to establish them. Any such boundaries would have had to have been entered into, agreed to, or issued before the effective date of this paragraph in order to be used by the Secretary as an effective boundary. If no seaward lateral boundaries have been established previously between coastal states (to the limit of their respective territorial sea), the Secretary shall extend seaward lateral boundaries between states by applying the principles of the Convention on the Territorial Sea and Contiguous Zone (15 UST 1606) which was entered into force on September 10, 1984. In this case, the Secretary would extend boundaries between the coastal states from the baselines of such states seaward to the limit of the outer continental shelf.

The Secretary is designated as the responsible official for determining the boundary extensions to be used for purposes of this subsection, and it is expected that he will consult with the necessary state and Federal officials for assistance in this determination.

Paragraph (3) of section 308(a) designates the Secretary of Commerce as the responsible official for purposes of compiling, evaluating, and calculating all relevant data pertaining to the six criteria and the determination of the amount of annual payments for each coastal state. In promulgating regulations to administer this section, it is expected that the Secretary will consult with relevant federal, state, or local agencies or governmental units to determine the most responsible method by which data collection and evaluation shall be made. It is also anticipated that the Secretary will allow input from interested organizations in this determination. In the opinion of the Committee, it is necessary for the Secretary to have absolute authority in the final evaluation and final computation of the data.

Payments to be made in any particular fiscal year are to be based on data from the immediately preceding fiscal year. Data from the transitional quarter (July 1, 1976-September 30, 1976) are to be considered fiscal year 1976 data.

Section 308(a) (4) specifies and prioritizes the uses of OCS payment funds. First, the recipient coastal state must retire any bonds which were issued and guaranteed under section 319 [309] of the bill. If the payment in a particular year is insufficient to retire both state and local bonds, priority is to be given to local bonds.

Bonds which are issued through normal revenue raising structure of state or local governments and not guaranteed pursuant to section 319 do not fall within this requirement.

If no state or local bonds were issued pursuant to section 319 [309], or if some OCS funds remained after retiring such bonds, the state may then use the monies to plan and carry out projects or programs designed to provide public services or facilities made necessary by OCS energy activity.

The third and final purpose for which the state could use the funds is to reduce or ameliorate any loss of ecological or recreational resources which resulted from OCS activity.

Paragraph (5) provides that any monies allocated to a coastal state under this subsection not spent or committed for the purposes authorized under paragraph (4) are to be returned to the Treasury of the United States. The Secretary is responsible for determining this each year by utilizing the auditing provisions of section 313 (as redesignated) of the Coastal Zone Management Act.

Section 308(a) (6) establishes the authorization levels for the next five years. The OCS payments are authorized at \$50 million for fiscal years 1977 and 1978 and escalate to \$125 million in fiscal year 1981. This accelerating level of authorization was adopted by the Committee to indicate that the OCS payments are to benefit all affected coastal states. As new "frontier" areas such as Alaska and

the Atlantic coast states begin to enter into the exploration and development phases of OCS activity, the monies should increase to permit a more equitable distribution of funds to those states which may have a previously limited or non-existent onshore infrastructure for dealing with OCS oil and gas.

Paragraph (7) states that, to the maximum extent practicable, recipient coastal states should allocate all or a portion of the OCS payment funds to their local governments. The state should calculate how much of each of its affected local governments will experience the various levels of OCS activity and make their allocation based on a reasonable estimate of each unit's proportional share of these activities. With the approval of the Secretary, the coastal state may transfer all or some of the payments to areawide, regional, or interstate agencies. The state maintains the responsibility to see that their local governments utilize the money in accordance with the purposes specified in paragraph (4).

Energy facility planning and net adverse impact grants

Subsections (b) through (f) of section 308 authorize energy facility planning grants and impact grants and subsection (g) specifies the conditions under which coastal states are eligible for either OCS payments or impact grants.

Subsection (b)(1) authorizes the Secretary to make grants to coastal states for up to 80 percent of the cost of studying and planning for the social, economic and environmental consequences of energy facilities located in or which significantly affect the coastal zone. It is the intent of the Committee that these planning grants should supplement the states' section 305 efforts including those devoted to the development of an energy facility process which is required under a new provision in H.R. 3981. The Committee is aware that there is an important distinction between the development of an energy facility "planning process", as required under new section 306(b)(8), the application of that process for evaluation of specific energy facility proposals, and the formulation of a long-term energy facility siting plan. It is the latter two for which section 308(b)(1) funds are intended although such evaluation and long term plans will result from the "process" provided for earlier. Also, these planning efforts are to be addressed to all facilities specified in the definition of "energy facilities" under section 304(k) and are not to be restricted to those facilities enumerated in the definition of Outer Continental Shelf energy activity (section 304(j)) or Coastal Energy Activity (section 304(o)).

Paragraph (2) of section 308(b) authorizes the Secretary to make 80 percent grants to a coastal state whose coastal zone has suffered, or will suffer, net adverse impacts resulting from coastal energy activity. Reference should be made to the discussions of these key definitions (304 (n) and (o)) above. The grants are to be used to reduce or ameliorate such net adverse impacts.

The phrase "has suffered" implies that coastal states which have experienced net adverse impacts in their coastal zones as a result of coastal energy activity prior to the date of enactment of this section are entitled to receive section 308(b) grants for those past impacts. Although this was the intent of the Committee, it was also felt that the Secretary should, in the regulations governing this subsection, establish an equitable retroactive time limit for such grants. It is recommended that a reasonable timeframe would be in the range of three-five years and would correspond to an applicable provision in the Senate bill, S. 586. The difficulty in obtaining accurate data beyond such a period would appear to make these net adverse impact calculations suspect.

Section 308(c) includes a specification of some of the factors which are to be included in the Department of Commerce's regulations.

Paragraphs (3) (A) and (D) of subsection (c) are factors essentially corresponding to two dimensions of the net adverse impact definition. Subparagraph (A) requires the Secretary to consider the offsetting benefits to a state's coastal zone from a coastal energy activity. "Offsetting benefits", it should be recalled, mean benefits directly offsetting costs.

Subparagraph (D) requires, in the calculation of net adverse impacts, the consideration of other federal funds which are available for the reduction or amelioration of net adverse impacts. Thus any funds available to coastal states or their local governments under other federal assistance statutes, as well as monies received under the OCS payments provision in section 308(a), are to be considered in determining the amount of an impact grant. Clearly, a state cannot receive monies both under the impact fund and other federal statutes for the same projects unless the funds from the other federal program or programs are insufficient to accomplish the purposes set forth in section 308(b)(2). In this event, a net adverse impact could remain, in part, and thus the Secretary could provide a grant pursuant to this subsection. However, it should be noted

that funds from other federal programs may not be used as the state's matching share for these 80 percent impact grants (see section 320(c)), as redesignated, of H.R. 3981. Consequently, the inadequacy of other federal programs to accomplish the purposes of this subsection does not include the portion attributable to the coastal state's 20 percent matching share.

The implementation of this particular subparagraph will require very precise rule-making on the part of the Secretary. A key word in (D) is "availability." This word was used by the Committee to indicate that the coastal state which may be making an application for a net adverse impact grant should have pursued, or at least be pursuing, other federal programs such as highway funds, Environmental Protection Agency sewage treatment grants, school construction funds, and the like. As part of the regulations, the Secretary should enumerate all "available" federal programs which may be used, in whole or in part, to ameliorate the adverse effects of coastal energy activity. It is recognized, of course, that these other federal programs will not utilize such specifically defined phrases as "net adverse impacts" and "coastal energy activity" as they are used in the Coastal Zone Management Act. Consequently, the Secretary will be required to inventory all programs which, if applicable, may provide funds for public facilities and public services or the reduction of ecological or recreational resources losses.

"Available", in this context, implies that other appropriate federal funds are obtainable. If, through no fault of the applicant coastal state, other federal monies are not forthcoming although the state made reasonable efforts to obtain them, they should not be considered "benefits" in the net adverse impact calculation. The burden of documenting these efforts, as well as the general obligation of demonstrating a net adverse impact, remains with the state.

Paragraphs (3)(B) and (3)(C) specify additional criteria which are to be taken into account in determining whether a net adverse impact from a coastal energy activity has occurred.

Subparagraph (B) requires the Secretary to consider the applicant state's overall efforts to reduce or ameliorate net adverse impacts. The Secretary should determine what form these efforts could take including the particular state and local tax structure and environmental laws and ordinances. Clearly, the types of protections inherent in the state's coastal zone management program are to be considered. Additionally, the Secretary is to consider the state's effort to insure that those who are responsible for the net adverse impacts are required, to the maximum extent practicable, to ameliorate these impacts themselves. Again, the state's efforts to encourage this "internalization of costs" by those responsible may be exerted in a number of ways, including tax incentives, strong environmental protection laws, and the withholding of siting permission until certain conditions are met.

Finally, the Committee considered subparagraph (C) an essential factor to be considered in the regulations governing this section. The coastal state must demonstrate that the site selected for a coastal energy activity is one in which there will be minimum social and environmental as well as economic "costs." Alternative sites for the locus of this activity must be investigated. A key dimension to interpreting this criterion in relation to net adverse impact determinations is one of "unavoidability."

The coastal zone location of potentially dangerous LNG facilities, for example, should be subject to strict environmental and safety consideration prior to site selection. This requirement should be fully integrated into the state's present program development efforts particularly with regard to the section 305 provisions which require a definition of permissible land and water uses and a designation of areas of particular concern within the coastal zone.

Additionally, it should be noted that the Committee was concerned about the residual governmental demands placed on state and local governments if anticipated coastal energy activity does not materialize, or should it do so, after it has ceased. Therefore, such grants may be used for the purpose of reducing or ameliorating the impact of coastal energy activity, including, but not limited to, the governmental services required for the orderly phasing out of energy activity and the transition from an energy-related to a nonenergy-related economy.

It is the intent of the Committee that the impact grants be distributed only on the basis of actual demonstrated coastal energy activity impact without regard to comparative state populations, miles of coastline or any other criteria used to determine eligibility for federal assistance in any other section of this or any other Act. The funds are to be distributed according to demonstrated impact without regard to the proportion of grants going to any single state or group of

states. The criteria promulgated by the Secretary shall provide for the distribution of net adverse impact grants in proportion to the relative demands on government made by the various types and stages of energy activity.

Subsection (d) of section 308 establishes the Coastal Energy Activity Impact Fund which is to be used by the Secretary as a revolving fund. Administrative expenses for carrying out the OCS payments subsection and/or the impact fund subsection may be charged to the fund. \$125 million for each fiscal year from 1977 through 1981 are authorized to be appropriated to the fund by subsection (e).

Section 308(f) authorizes coastal states which have received planning or impact grants to allocate all or a portion of those funds to their affected local governments and, with the approval of the Secretary, to areawide, regional, or interstate agencies.

Finally, subsection (g) establishes the conditions under which a coastal state is eligible for OCS payments or impact grants. The state must be receiving a program development grant under section 305, an administrative grant under section 306, or be making satisfactory progress, as determined by the Secretary, toward the development of a coastal zone management program. It is not necessary, therefore, that a state be receiving a section 305 or 306 grant to be eligible for section 308 funds. It is necessary, however that the state be making progress toward the development of a coastal zone management program and that the section 308 funds received be used in a manner consistent with such program. It is the intent of the Committee that the Coastal Energy Activity Impact program be fully integrated into the states' management programs. The important work accomplished by the Nation's coastal states to date should form a sound structure on which the energy program can be built and the comprehensive nature of the coastal zone management structure maintained and strengthened.

Paragraph (3) also provides for a new section 309 "state and local bond guarantees".

Section 319(a) [309(a)] of this section would authorize the Secretary of Commerce to make commitments to guarantee and to guarantee bonds or other evidences of indebtedness which are issued by a coastal state or unit of general purpose local government thereof [under section 309(b),] a bond could be guaranteed only if it is issued for the purpose of providing public services and public facilities which are made necessary by Outer Continental Shelf energy activities. It should be noted that "public services and public facilities" and "Outer Continental Shelf energy activities" are defined terms in section 2, subparagraph (4) of this Act, and such terms would have application to this section. Reference should be made to the explanation of these terms within this section by section analysis.

Section 319(c) [309(c)] stipulates that no bond could be guaranteed unless the Secretary determines that:

(1) The state or local government could not borrow sufficient revenues on reasonable terms and conditions without the guarantee.

(2) The bond issued must provide for a complete amortization period within thirty years.

(3) The total principal amount of any individual bond to be guaranteed cannot exceed \$20,000,000.

(4) The total principal amount of all bonds to be guaranteed under this program cannot exceed \$200,000,000.

(5) The Secretary must determine that each bond to be guaranteed is:

(a) issued only to investors approved by or meeting the requirements of the Secretary.

(b) bonds must bear interest at a rate satisfactory to the Secretary.

(c) each bond must be subject to repayment and maturity terms satisfactory to the Secretary.

(d) each bond issued must contain provisions which would adequately protect the financial security interests of the United States.

(6) The approval of the Secretary of the Treasury is required for each guarantee made by the Secretary of Commerce. It is presumed by inclusion of this provision that the Secretary of Commerce will work closely with the Secretary of the Treasury in the formulation of the various rules, regulations, and provisions necessary for the implementation of this bond guarantee program.

(7) The Secretary must determine that there is a reasonable assurance of repayment between the issuer and the lender of such bonds.

(8) No guarantee could be made after September 30, 1981.

Section 319(d) [309(d)] would require that the Secretary publish proposed terms and conditions of the guarantee program prior to guaranteeing any obligation. A thirty day public comment period is provided following publication of the proposed terms. After the comment period, the Secretary would publish final conditions, but these would not become effective until thirty days after publication.

Section 319(e) [309(e)] would provide that the full faith and credit of the United States is pledged to the payment of all guarantees. This language is standard in recent Federal guarantee statutes, and would generally serve to assure that any bond so guaranteed would enjoy a priority rating within the bond market.

Subsection (f) of section 319 [309] would direct the Secretary to prescribe and collect a reasonable guarantee fee from the states and local governments. The amount of such fees should be sufficient to cover necessary administrative costs of the bond guarantee program. Subsection (g) would not permit the Secretary to guarantee any Federal tax-exempt bonds.

Section 319(h) [309(h)] sets forth the method by which payments shall be made in cases of defaults by the state and local governments. The United States shall have a full right of reimbursement for any such payments made, and the Secretary would be permitted to apply monies received by the states or local governments pursuant to section 308(a) of the Act to repay the Federal Government in the event of a default. The Attorney General of the United States would be directed to take appropriate action to protect the rights of the United States if so requested by the Secretary of Commerce.

Section 319(i) [309(i)] establishes a revolving fund to provide for necessary payments and administrative costs required to be made pursuant to this section. Funds could either be appropriated directly to this fund or the Secretary of the Treasury could be authorized (in appropriation Acts) to purchase obligations issued by the Secretary of Commerce. Both options are subject to the usual appropriations process and are included for purposes of flexibility and consistency.

An auditing provision is included in section 319(j) [309(j)] which would permit the General Accounting Office to audit all financial transactions of issuers and holders of bonds or other evidences of indebtedness. Only those financial transactions which relate to such evidence of indebtedness would be subject to this provision.

The final subsection in section 319 [309] defines "unit of general purpose local government" as used in this bond guarantee section.

TITLE V—MISCELLANEOUS PROVISIONS

Section 501.—Review of Shut In or Flaring Wells

The Committee was concerned about the loss of energy because of shut-in and flaring wells. Section 501 directs the Secretary of the Interior to report to the Comptroller General and to the Congress within six months, and in his annual report thereafter, on all shut-in oil and gas wells and all wells flaring natural gas. The Comptroller General is to review and evaluate the methods already used by the Secretary in allowing the wells to be shut-in or to flare natural gas. The Committee is aware that the Secretary of the Interior and the Federal Power Commission have already collected data on this subject. It is not intended that this job be repeated as long as existing reports contain the information needed by the Comptroller General, and by the Congress.

Section 502.—Review and Revision of Royalty Payments

The Committee was concerned that the United States was not getting its fair value for the leasing of its resources in the Outer Continental Shelf, as some lessees have not been promptly paying their royalties. In order to allow review of this problem, section 502

directs the Secretary of the Interior, within 90 days, and annually thereafter, to submit a report on delinquent royalty accounts and to detail what new procedures including auditing and accounting procedures had been or should be adopted to assure accurate and timely payment of any royalty or net profit share in the future.

Section 503.—Natural Gas Distribution

As indicated in a discussion on the disposition of federal royalty, net profit share, or purchased oil and gas, the Committee was concerned with the serious dislocation of natural gas in the United States. In addition, as indicated in the requirements for new bidding systems, and comments and recommendations to be made by the Attorney General and the Federal Trade Commission to be made on certain decisions, the Committee was also concerned with the possible lack of competition in the awarding of leases on the Outer Continental Shelf. One way to alleviate both of these problems is to provide procedures and incentives for natural gas distributing companies to bid on, and then explore, develop, and produce Outer Continental Shelf leases.

Testimony presented to the Committee indicated that one reason that such companies had not been involved in OCS activities to any large extent was because of regulatory limitations in their states. Specifically, such companies must justify to their state regulators the expenditure of any money for the obtaining of gas. The regulators would not authorize such expenditures, if there was no guarantee that the gas obtained through such expenditures would come to geographic areas served by such distributing company. Geographic allocation of interstate gas is determined, through its curtailment power, by the Federal Power Commission, under the Natural Gas Act, and therefore, permission must be obtained by the Federal Power Commission to allow any natural gas distributing company which finds, and then produces, gas on a lease in the Outer Continental Shelf to transport such gas to its market. Section 503 requires the Federal Power Commission to permit any natural gas distributing company involved in OCS development and production to transport to its service area any gas obtained by such company from its lease.

It is the intention of the Committee that this mandate to the Federal Power Commission shall only effect the gas discovered by a distributor on its lease hold. It is not the Committee's intention to effect the general curtailment powers of the Federal Power Commission. The Federal Power Commission may, in accordance with its regulations and procedures, determine, through curtailments, the delivery of all natural gas. The only effect of this Section would be that the Federal Power Commission cannot exercise its curtailment power in any way to preclude the natural gas found by such distributing company on its own lease from being returned to its service region. Such gas may, of course, be counted as part of the amount allocated to such service region by the Federal Power Commission in any general curtailment process.

Section 504.—Relationship to Existing Law

Section 504 provides for consistency of this Act with all other acts, including the Coastal Zone Management Act, the National Environmental Policy Act, and the Mining and Mineral Policy Act, unless expressly provided to the contrary.

VII. COST OF THE LEGISLATION

Pursuant to Clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee has estimated the costs of the legislation.

Title I of the bill, "Findings and purposes with respect to managing the resources of the Outer Continental Shelf," involves no implementation costs.

Title II of the bill amends the Outer Continental Shelf Lands Act. These amendments vest new responsibilities in the Department of the Interior which will result in additional costs of approximately \$13 million per year.

The responsibility for baseline and monitoring studies is transferred in the new section 20 from the Bureau of Land Management in the Department of the Interior to the National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce. The responsibility in the early years will be very great, as NOAA must conduct baseline studies in the new frontier of the Outer Continental Shelf, as well as studies within the three-mile limit and onshore, to assess the onshore impact of offshore development. Costs for these studies and the personnel that will be needed may be as high as \$50 million in the early years. In later years, as NOAA concentrates on the environmental monitoring, costs will decline to about \$2 million per year.

An increase in the cost of enforcement is anticipated also. In the first year, this increase is expected to be about \$35 million, primarily for the purchase of new vessels, aircraft and other enforcement equipment. In later years, the added costs are only expected to be \$5 million per year.

Miscellaneous additional implementation costs are expected to be incurred under Title II by the Department of Justice which must advise the Secretary of the Interior with respect to antitrust actions and which may be involved in litigation resulting from enactment of the bill; and by the Department of Labor, which must assist in the development and enforcement of safety regulations. These miscellaneous additional costs are not expected to exceed \$1 million per year.

The implementation costs for Title II are summarized in the following table:

TITLE II.—IMPLEMENTATION COSTS

(In millions of dollars)

	Fiscal year—				
	1977	1978	1979	1980	1981
Interior.....	14	13	13	13	13
NOAA.....	50	40	40	2	2
Coast Guard.....	35	5	5	5	5
Miscellaneous (Justice and Labor).....	1	1	1	1	1
Total.....	100	59	59	21	21

Title III of the bill establishes an Offshore Oil Spill Pollution Fund. Specific amounts are authorized in this Title as shown in the following table:

TITLE III.—Implementation costs

Oil spill fund:	Millions
Fiscal year 1977.....	\$10
Fiscal year 1978.....	5
Fiscal year 1979.....	5

Title IV amends the Coastal Zone Management Act of 1972 by establishing a Coastal Energy Activity Impact Program. The costs incurred by this program are summarized in the following table:

TITLE IV.—IMPLEMENTATION COSTS

(In millions of dollars)

	Fiscal year—				
	1977	1978	1979	1980	1981
Sec. 308 (a).....	50	50	75	100	125
Sec. 308(b).....	12	125	125	125	125
Program management costs.....	1	1	1	1	1
Total.....	63	176	201	226	251

Title V contains miscellaneous provisions which will not result in any additional implementation costs.

The Total for all implementation costs expected to be incurred as a result of the enactment of this legislation are summarized in the following table:

TOTAL IMPLEMENTATION COSTS

(In millions of dollars)

	Fiscal year—				
	1977	1978	1979	1980	1981
Title I.....					
Title II.....	100	59	59	21	21
Title III.....	10	5	5		
Title IV.....	63	176	201	226	251
Title V.....					
Total.....	173	240	265	247	272

In addition to the implementation costs of this bill, there is a possibility that there may be a loss in revenues in the early years of the implementation of the Act, only to be made up in later years.

Section 205 of the bill authorizes the Secretary of the Interior to experiment with the bidding procedures used in granting leases. In addition to the front end cash bonus method which is the primary bidding method used today, the Secretary is authorized to use other bidding procedures. Some of these other bidding procedures call for payment to the Secretary to be made after production has begun, based on net profits or royalties, rather than as a front-end bonus. Therefore, revenues may be collected by the Secretary in later years rather than at the time of the lease sale.

The Secretary is required to use these alternate bidding procedures on at least ten percent of the leases, unless he finds that such a practice would delay the development of the resources or reduce the revenues of the Government. Therefore, the reduction in revenues in early years may be anywhere from 0 percent (if the Secretary

continues to use the front-end cash bonus method on 100 percent of the leases) to 100 percent (if the Secretary defers *all* revenues until later years by using alternate bidding methods on 100 percent of the leases).

VIII. COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

With respect to the requirements of clause 2(1)(3) of House Rule XI of the Rules of the House of Representatives—

(A) The Ad Hoc Select Committee on Outer Continental Shelf has no oversight responsibility pursuant to clause 2(b)(1) of Rule X, because it is not a standing committee. Furthermore, under the House resolution which created the ad hoc committee, H. Res. 412, no oversight responsibility is delegated to the committee. The committee did, however, hold extensive hearings in the preparation of this legislation, visiting 13 cities and hearing from over 400 witnesses, and the major points brought out in this testimony are highlighted in "Need for H.R. 6218".

(B) In the opinion of the Congressional Budget Office, no new budget authority or increased tax expenditures, as required in Section 308(a) of the Congressional Budget Act of 1974, will result from the enactment of this Act.

(C) Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared a cost estimate for H.R. 6218. (The cost estimate follows the Inflationary Impact Statement.)

(D) The Committee on Government Operations has sent no report to the Ad Hoc Select Committee on Outer Continental Shelf pursuant to clause 2(b)(2) of Rule X.

IX. INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 6218 would have a net negative inflationary impact on the prices and costs in the national economy. By promoting the development and production of the oil and gas resources on the Outer Continental Shelf, this bill would increase the domestic supply of petroleum and could potentially cause a decrease in the world price of oil. This potential reduction in the price of oil would be reflected in the prices and costs of virtually all products and services in the national economy, and would thus result in a net negative inflationary impact.

X. CONGRESSIONAL BUDGET OFFICE REPORT

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 26, 1976.

Hon. JOHN M. MURPHY.

*Chairman, Ad Hoc Select Committee on Outer Continental Shelf,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached revised cost estimate for H.R. 6218, Outer Continental

Shelf Land Act Amendments of 1976. The only cost change included in this revision of the April 20, 1976 CBO estimate is the Title II implementation cost information and results from a change in the assumptions used for estimating the effect of the transfer of responsibility for baseline and monitoring studies.

Since no new budget authority or tax expenditures are created by this bill, no estimate pursuant to Section 308(a) of the Congressional Budget Act is required.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

APRIL 26, 1976.

1. Bill number: H.R. 6218.
2. Bill title: Outer Continental Shelf Lands Act Amendments of 1976.
3. Purpose of bill: The major objectives of this bill are to amend the Outer Continental Shelf Lands Act and establish a policy for the management of Outer Continental Shelf (OCS) oil and natural gas. In addition, the legislation would protect the marine and coastal environment through the establishment of an offshore Oil Spill Pollution Fund. With the exception of the potential revenue effects, this is an authorization bill, subject to appropriation action.
4. Cost estimate: This bill would affect the budget in several ways. The new costs associated with implementation of the provisions of the bill would increase budget outlays. The experimentation with the lease bidding systems can be expected to change the stream of OCS revenues over time and lead to lower revenues in the period through fiscal year 1981. The bill would also subject the government to several contingent liabilities. In generating these estimates, the bill is assumed to be fully operational for FY 1977. Budget impacts are summarized below:

(In millions of dollars)

	Fiscal year—				
	1977	1978	1979	1980	1981
Implementation costs (Titles I-V).....	125-173	201-239	226-264	246	271
Revenue losses ¹	140	180	90	50	30

¹ See basis of estimate section for explanation.

In addition, this bill would impose contingent liabilities upon the federal government. The extent of these liabilities for Title II is undeterminable, for Title III, \$500 million (maximum), and for Title IV, \$200 million (maximum).

5. Basis of estimate: *Implementation Costs.*—Titles I and V are estimated to require only minor costs.

Title II's major cost provisions that would add significantly to ongoing activities include the revision of bidding and lease administra-

tion, the transfer of responsibility for baseline and monitoring studies, the resolution of international boundary disputes, the establishment and enforcement of safety regulations, and the analysis of OCS oil and gas information. It is necessary to present the implementation costs for this section as a range because of the uncertain costs associated with the transfer of primary responsibility for baseline and monitoring activities from the Department of the Interior to the Department of Commerce. The program level resulting from the transfer is difficult to estimate because of the administrative discretion that may be applied in implementing the remaining tasks of this program. The costs associated with these activities follow:

Implementation costs (title II)

(In millions of dollars)

Fiscal year:	
1977	52-100
1978	21-59
1979	21-59
1980	21
1981	21

Title III would require some direct start up funding before the Offshore Oil Pollution Compensation Fund could absorb these expenses. The spend-out pattern assumed for such administrative expenses is 95 percent in the first fiscal year and 5 percent in the second. The costs are summarized below:

(In millions of dollars)

	Fiscal year—				
	1977	1978	1979	1980	1981
Authorization levels	10	5	5		
Implementation costs (title III)	10	5	5		

Other costs are assumed to net to zero given the revolving fund revenues for OCS production fees.

Title IV's major cost elements are payments to coastal states based on a function of their share of energy facility activity and cost-sharing grants to states for studying and planning for economic, social, and environmental consequences from energy facilities in coastal zones. The expenditures for payments to states are assumed to equal obligations in each fiscal period. For the cost-sharing grants to states, a spend-out pattern of 10 percent for the first year and 90 percent for the second year is assumed. The cost estimates are summarized below:

Implementation costs

(In millions of dollars)

Fiscal year:	
1977	63
1978	175
1979	200
1980	225
1981	250

Revenue Losses.—Section 205 of the bill authorizes the Secretary of the Interior to grant leases according to several experimental

bidding procedures in addition to the traditional cash bonus bid method. The thrust of this provision is to decrease the front-end cash required so that competition for leases might be increased. The methods used are at the discretion of the Secretary, with the only constraint being the use of the non-cash-bonus-bid-fixed-royalty methods for at least ten percent of the leases. The assumption is made that the bidding experimentation would be implemented for the minimum 10 percent of the leases and that this would result in a decrease of one-half for the bonus revenues of this 10 percent of the leases. These experimental methods are designed to increase revenues in the production phase of OCS activity; however, these revenue increases would occur after fiscal year 1981, which is outside the scope of this estimate. Using estimates of OCS bonus receipts, the following loss of revenues can be expected:

<i>Revenue losses</i>	
[In millions of dollars]	
Fiscal year:	
1977	140
1978	180
1979	90
1980	50
1981	80

Contingent liabilities.—The provision of Title II dealing with OCS oil and gas development and production (Section 209, new Section 25) would impose a contingent liability upon the federal government if a lease were denied under certain circumstances. If a development plan were disapproved by the Secretary of the Interior because of "exceptional geologic conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances" and the proposed plan cannot be modified satisfactorily, then the lessee would be entitled to reimbursement by the U.S. government "for all consideration paid for the lease, plus interest thereon from the date of payment to the date of reimbursement, and for all direct expenditures made after the date of the issuance of such lease and in connection with exploration or development of the lease." This liability could exceed \$100 million, and no limit on liability is set in the bill; however, there is a very low probability of occurrence for such an event.

Section 309 of Title III would impose a contingent liability upon the Offshore Oil Pollution Compensation Fund for cleanup costs resulting from any discharge caused solely by an act of war or negligence on the part of the federal government in establishing and maintaining aids to navigation and for damages in excess of the private limitation established in the bill and for damages from sources undeterminable or beyond the jurisdiction of the U.S. All the funds in the Fund, plus up to \$500 million in obligations for the Secretary of the Treasury may be expended, in fulfillment of the bill's requirements.

The amendments to Section 309 of the Coastal Zone Management Act of 1972 included in Title IV, would impose a contingent liability on the U.S. through the authorization of the Secretary of Commerce "to make commitments to guarantee and to guarantee the payment of interest on and the principal balance of bonds or other evi-

dences of indebtedness" issued to provide public services or facilities necessary because of OCS activities. A maximum for all obligations guaranteed at any one time is \$200 million. (For any one state, local or regional governmental unit, the maximum would be \$20 million.)

6. Estimate comparison: None.

7. Previous CBO estimate: The only cost change from an earlier CBO estimate (April 20, 1976) included in this revised estimate is in the Title II implementation cost information and results from a change in the assumptions used for estimating the effect of the transfer of responsibility for baseline and monitoring studies.

8. Estimate prepared by: William F. Hederman, Jr. (225-5275).

9. Estimate approved by:

C. G. NUCKOLS,

James L. Blum (First Assistant Director for Budget Analysis).

XI. DEPARTMENTAL REPORTS

H.R. 6218 was the subject of reports from the Departments of Defense, Interior, Navy; Commerce, State, Transportation, Energy Research and Development Administration, and the General Accounting Office. A report was also requested from the Federal Energy Administration but was not received by the time this report was filed. The reports follow herewith:

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., November 20, 1975.

Hon. JOHN M. MURPHY,
*Chairman, Ad Hoc Select Committee on Outer Continental Shelf,
Congressional Hotel, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 6218, 94th Congress, a bill "To establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes."

While the Department of Defense has a vital interest in the activities which may take place in the Outer Continental Shelf, for the most part the provisions of this bill do not directly affect any Department of Defense programs. Accordingly, except for the several points noted below, this Department defers to those Federal Agencies having direct responsibility for OCS development.

"Coastal State" as defined on page 5 of the bill differs from the 1972 Act (PL 92-583) in that the 1972 Act definition includes the Great Lakes states while the bill (H.R. 6218) does not.

Section 203 of the bill would amend the Outer Continental Shelf Lands Act to direct the Secretary of the Interior to "offer to the public and sell by competitive bidding for not less than its fair market value, in such amounts and for such terms as he determines, that proportion of the oil produced from said lease which is due to the United States as royalty or net profit share oil." The OCS Act (43 U.S.C. 1341(b)) now provides that "In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal

to purchase at the market price all or any portion of any minerals produced from the Outer Continental Shelf." It would appear that the new section 203 would extinguish the right of first refusal now enjoyed by the U.S. Therefore, the Department of Defense opposes this particular section as written.

This Department is concerned that the Defense classified information which may be furnished to the Secretary of the Interior pursuant to proposed section 19 is not adequately safeguarded against disclosure. This may be corrected by incorporating the procedures and exemptions of the recently amended "Freedom of Information Act." It is proposed that this provision be amended by adding a phrase to the end of the second sentence of proposed section 19(b), (page 18, line 11). As amended this sentence would read: "Proprietary information or data provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the Department or Agency from whom the information is requested; other information provided to the Secretary under provisions of this subsection shall be made available to the public in accordance with section 552 of Title 5, United States Code."

In view of the indirect impact that this bill would have upon the programs of the Department of Defense in the event of enactment, it is not possible to furnish an estimate of costs.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., December 2, 1975.

HON. JOHN M. MURPHY,
*Chairman, Ad Hoc Committee on Outer Continental Shelf,
Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H.R. 6218, 94th Congress, a bill "To establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes."

A report on this bill was made previously by my letter of 20 November 1975. The report contained herein is to be used in lieu of the previous report. The present report includes recommended language for changing the first sentence of the amendment contained in section 203 of the bill. This language was omitted inadvertently from the previous report.

While the Department of Defense has a vital interest in the activities which may take place in the Outer Continental Shelf, for the most part the provisions of this bill do not directly affect any Department of Defense programs. Accordingly, except for the several points noted

below, this Department defers to those Federal Agencies having direct responsibility for OCS development.

Section 203 of the bill would amend the Outer Continental Shelf Lands Act to direct the Secretary of the Interior to "offer to the public and sell by competitive bidding for not less than its fair market value, in such amounts and for such terms as he determines, that proportion of the oil produced from said lease which is due to the United States as royalty or net profit share oil." Section 12(b) of the Outer Continental Shelf Lands Act (67 Stat. 469; 43 U.S.C. 1341(b)) now provides that, "In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of any minerals produced from the Outer Continental Shelf." It would appear that the amendment to the Act contained in section 203 of the bill creates an ambiguity which could be construed as being inconsistent with the priorities defined in section 12(b) of the Outer Continental Shelf Lands Act. To correct this defect and to make clear that the amendment would not obviate section 12(b) of the Act, we recommend that the first sentence of the amendment contained in section 203 of the bill be changed to read as follows:

"Upon commencement of production of oil from any lease issued after the effective date of this subsection, the Secretary shall, in his discretion, and except as provided in subsection (b) of section 12 of this Act, offer to the public and sell by competitive bidding for not less than its fair market value, in such amounts and for such terms as he determines, that proportion of the oil produced from said lease which is due to the United States as royalty or net profit share oil."

This Department is concerned that the Defense classified information which may be furnished to the Secretary of the Interior pursuant to proposed section 19 is not adequately safeguarded against disclosure. This may be corrected by incorporating the procedures and exemptions of the recently amended "Freedom of Information Act." It is proposed that this provision be amended by adding a phrase to the end of the second sentence of proposed section 19(b) (page 18, line 11). As amended this sentence would read:

Proprietary information or data provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the Department or Agency from whom the information is requested; other information provided to the Secretary under provisions of this subsection shall be made available to the public in accordance with section 552 of Title 5, United States Code.

In view of the indirect impact that this bill would have upon the programs of the Department of Defense in the event of enactment, it is not possible to furnish an estimate of costs.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

DEPARTMENT OF STATE,
Washington, D.C., January 20, 1976.

HON. JOHN M. MURPHY,
*Chairman, Ad Hoc Select Committee on Outer Continental Shelf,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your letter of October 28, 1975, requesting the views of the Department of State on H.R. 6218, a bill "To establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to Amend the Outer Continental Shelf Lands Act; and for other purposes."

In general, H.R. 6218 relates to matters which are not subject to the jurisdiction of this Department. Accordingly, we defer to the views of other concerned agencies regarding the desirability of its adoption. However, there are certain aspects of H.R. 6218 on which we do wish to make brief comments.

First, we note that this legislation does not amend the definition of the outer continental shelf presently contained in 43 U.S.C. § 1331. As Mr. Oxman of the Department indicated in his testimony before the Committee on November 13, we believe that this is a sound approach. The present definition is sufficiently flexible to accommodate any outcome of the Law of the Sea negotiations regarding the character and extent of State jurisdiction over the continental shelf.

Second, we wish to refer to Section 206 of the bill, which would amend Section 11 of the Outer Continental Shelf Lands Act and establish a permit requirement for geological or geophysical exploration in the O.C.S. It should be noted that under present international law, the right to conduct scientific research in the water column over the O.C.S. is a protected freedom of the High Seas. However, Article 5(8) of the Continental Shelf Convention provides that "the consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there." In the view of the United States, this requirement applies only where the research is both concerning the continental shelf, and involves physical contact or touching of the shelf. Thus, we could not, consistently with our obligations under the Continental Shelf Convention, impose a permit requirement on research by foreign persons not subject to the jurisdiction of the United States, when the research did not involve physical contact with the continental shelf. Accordingly, we understand the language of the proposed new Section 11 to mean that the term "person" relates only to persons subject to the jurisdiction of the United States. With respect to such persons, there can be no question of our right to impose any permit or other requirements as a condition for scientific research.

Finally, we wish to note the proposed new Section 26 of the legislation, which would enable the President to establish procedures for settling outstanding boundary disputes. Pursuant to the President's constitutional authority for the conduct of foreign relations and for the negotiation of treaties, discussions have already been initiated with Canada for this purpose, and similar discussions with Mexico will be undertaken at an appropriate future time.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

ROBERT J. McCLOSKEY,
Assistant Secretary for Congressional Relations.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., January 21, 1976.

HON. JOHN M. MURPHY,
*Chairman, Ad Hoc Select Committee on Outer Continental Shelf,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Transportation concerning H.R. 6218, a bill "To establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes."

On November 20, 1975, Admiral Owen W. Siler, Commandant, U.S. Coast Guard, testified before your committee, on behalf of this Department, concerning the substance of H.R. 6218. That testimony represents the position of the Department of Transportation concerning the proposed legislation.

Sincerely,

JOHN HART ELY,
General Counsel.

U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,
Washington, D.C., January 27, 1976.

HON. JOHN M. MURPHY,
*Chairman, Ad Hoc Select Committee on the Outer Continental Shelf,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Energy Research and Development Administration (ERDA) is pleased to respond to the Committee's letter of October 29, 1975, requesting our views on H.R. 6218, a bill "[t]o establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes." While we favor the general objective of protecting and developing oil and gas resources for the Outer Continental Shelf, ERDA does not support enactment of H.R. 6218. As presently drafted, the bill covers many activities that are presently assigned to ERDA and other agencies; therefore, enactment would result in duplicative and unnecessary efforts.

H.R. 6218 would establish new procedures for managing oil and gas resources located in the Outer Continental Shelf (OCS). The bill would also preserve oil and gas resources in the OCS and facilitate

resource development within limits of marine and coastal environment considerations.

Title II of H.R. 6218 expands upon the Outer Continental Shelf Lands Act by revising the bidding procedures and the lease administration of oil and gas sites. That Act is also amended by directing the Secretary of the Interior to initiate a leasing program for oil and gas exploration and development. This program would be conducted within the guidelines established for the geophysical and geologic activities contemplated in the OCS.

To enable full participation by any affected state in the leasing and development plan, Title II of the bill requires the Secretary of the Interior to submit a proposed plan to governors of the affected coastal states and adjacent states for comment at least sixty days preceding the transmittal to Congress. The governor of any affected state would be authorized to request a three-year postponement of implementation of the plan which the Secretary could deny, grant, or grant in part.

There are several aspects of H.R. 6218 which are considered objectionable by ERDA. It appears that Title II of H.R. 6218 would formalize by legislation many practices in the OCS leasing scheme which the Secretary of the Interior now utilizes by departmental regulation. Such formalization by the Congress would not, therefore, appear necessary. It would also undesirably reduce the Secretary's flexibility to respond to future changes in conditions.

Section 206 of H.R. 6218 provides for an amendment to the OCS Lands Act by providing that: "No person shall conduct any type of geological explorations in the Outer Continental Shelf without a permit issued by the Secretary."

Although this clause is obviously directed at the exploration for oil and natural gas in the OCS, and in that regard we defer to the Department of the Interior, a broad interpretation of Section 206 could cause interference with many aspects of oceanographic research as well as the collection of geochemical data totally unrelated to oil and natural gas exploration and development. Since several ERDA contractors are studying such processes as radionuclide uptake and exchange by marine sediments, trace metal, etc., this provision could hinder our coastal oceanographic program particularly off the Southeast Coast and in the Gulf of Mexico.

Section 18(b)(3) would add the requirement to the Outer Continental Shelf Lands Act that the Secretary prepare a leasing program whereby the most environmentally-safe areas would be leased first. We would urge that no such restriction be imposed upon research activities since it is only through continuing study that environmental problems can be identified and the leasing plan be "maintained" as required by Section 18(b).

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

R. TENNEY JOHNSON,
General Counsel.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., August 28, 1975.

HON. LEONOR K. SULLIVAN,
*Chairman, Committee on Merchant Marine and Fisheries, House of
Representatives, Washington, D.C.*

DEAR MADAM CHAIRMAN: This refers to S. 521, 94th Congress, the proposed "Outer Continental Shelf Management Act of 1975," a bill to increase the supply of energy in the United States from the Outer Continental Shelf, to amend the Outer Continental Shelf Lands Act, and for other purposes. The Senate passed the bill on July 30, 1975, and we understand that it will be referred to your Committee following the August recess. We are taking the opportunity at this time to comment on two provisions of the bill which are of particular concern to our Office, in the event your Committee gives the proposed legislation immediate consideration.

Section 202 of the bill as passed by the Senate would revise the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 *et seq.*, by adding several sections to that Act, among which is a new section 23 which would establish the Offshore Oil Pollution Settlements Fund to provide relief in the event of oil spills. In section 23(b)(6) of this proposed amendment, the fund is subject to an annual audit by the Comptroller General, with a copy of each such audit to be submitted to the Congress.

To allow our Office the desired flexibility in the use of its resources, we recommend that the annual audit requirement be deleted, and instead, the provision require audits to be made at least once in every 3 years, with a report to Congress within 6½ months following the audit year. This would be consistent with similar requirements for wholly-owned Government corporations under sections 105 and 106 of the Government Corporation Control Act, as amended by section 601 of the General Accounting Office Act of 1974, approved January 2, 1975, Pub. L. No. 93-604, 88 Stat. 1959, 1962, 31 U.S.C.A. §§ 850, 851 (Supp. February 1975). To this end, section 23(b)(6) of section 202 might be amended to read as follows:

"(6) The Offshore Oil Pollution Settlements Fund is hereby established as a nonprofit corporate entity that may sue and be sued in its own name. The fund shall be administered by the holders of leases issued under this Act under regulations prescribed by the Secretary. The fund shall be audited by the Comptroller General at least once in every three fiscal years and reports of the results of each such audit made to the Congress within six and one-half months following the end of the fiscal year covered by the audit. Claims allowed against the fund shall be paid only from moneys deposited in the fund."

Section 302(a) of the bill would require that, within 6 months following the date of enactment of this legislation, the Secretary of the Interior submit to the Congress and to the Comptroller General a report listing all shut-in oil and gas wells and wells flaring natural gas on leases issued under the Outer Continental Shelf Lands Act. This report is to indicate why each well is shut-in or flaring natural gas, and whether the Secretary intends to require production

or order cessation of flaring. Within 6 months after receipt of the Secretary's report, the Comptroller General would be required under subsection 302(b) to review and evaluate the reasons for allowing the wells to be shut-in or to flare natural gas and to submit his findings and recommendations to the Congress.

This requirement for review and evaluation would involve our Office in a function calling for special expertise in Outer Continental Shelf drilling technology. We believe that the Department of the Interior—the agency administering the leases—has such expertise and should have the primary responsibility for evaluating the actions of lessees. We recommend, therefore, that the legislation be amended to require the Comptroller General, instead of evaluating the *reasons* for allowing the wells to be shut-in or flaring, to evaluate the *methodology* used by the Secretary in preparing his report and the support for the Secretary's findings, and to report on this evaluation to the Congress. Accordingly we recommend that the present section 302(b) be amended to read as follows:

“(b) Within six months after receipt of the Secretary's report, the Comptroller General shall review and evaluate the methodology used by the Secretary in satisfying the reporting requirements of section (a) of this section, and shall submit his findings and recommendations to the Congress.

Sincerely yours,

R. F. KELLER,
*Deputy Comptroller General
of the United States.*

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 16, 1975.

HON. JOHN M. MURPHY,
*Chairman, Ad Hoc Select Committee on the Outer Continental Shelf,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for this Department's views on H.R. 6218, a bill “To establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and other purposes.”

Subject to the comments set forth below, we recommend that the bill not be enacted because appropriate action with respect to OCS energy resources can be taken under existing law.

Our present energy needs require a strong program to develop the oil and gas resources of the Outer Continental Shelf, where this can be done with reasonable protection of environmental values and without other seriously undesirable impacts. More specifically, we must move ahead with exploration, leasing and production on those frontier areas of the OCS where the environmental risks are acceptable. In carrying out this program, we fully appreciate the need to meet the legitimate concerns of affected individuals and organizations. The program will be carried out in close cooperation with coastal States in their planning for possible increased local development.

THE BILL

H.R. 6218 would modify the program of petroleum production from the Outer Continental Shelf through establishment of new leasing, environmental, and safety requirements under the Outer Continental Shelf Lands Act.

Leasing program.—The Department of the Interior would be required to develop a leasing program to best meet national energy needs for a 10-year period after enactment, specifying the size, timing and location of leasing activity. Criteria for the program would include consideration of all economic, social, and environmental values of Outer Continental Shelf resources and their impacts; schedule and location of exploration, development and production of oil and gas on the Outer Continental Shelf; scheduling the time and location of leasing so that the least environmentally dangerous areas are leased first and that development is allowed to keep pace with availability of materials and equipment; and the receipt of fair market value for public resources. The Secretary of the Interior would also be required to prepare estimates of appropriations and staffing needed to carry out the program.

Section 8 of the Outer Continental Shelf Land Act would be revised to specify bidding by sealed bid only. H.R. 6218 would allow, in addition to bonus bidding, bidding for OCS leases on a "net profit" basis. It would also allow the charging of rentals and would permit the Secretary to limit sales of royalty oil to protect independent refiners. H.R. 6218 also would require the Secretary in consultation with the Comptroller General to prepare and publish a bidding system study within one year of enactment with recommendation for achieving an equitable system of lease sales.

Leases to OCS tracts would cover an area as large as necessary with a term of five years and as long thereafter as oil and gas may be produced from an area in paying quantities, or drilling or well reworking operations approved by the Secretary are conducted thereon.

Under H.R. 6218 the Secretary would be required to submit an annual report to Congress within six months after the end of each fiscal year on OCS leasing and production programs including a detailed accounting of all money received and expended, a description of exploration activities, and recommendations to Congress.

Leasing and development plans.—H.R. 6218 also requires the Department to transmit an exploration and development plan containing specified information to the Congress 90 days prior to announcing the invitation to bid on each tract. The Department would be free to carry out the plan, if Congress approves it by the end of the 90-day period.

The OCS exploration and development plan would include (without limitation):

- (1) The extent or estimate of the resources within the tract.
- (2) The location of tract in relation to other offshore activity.
- (3) The best available estimates of recoverable reserves.
- (4) The current market value of recoverable reserves.
- (5) The cost of producing under the plan.
- (6) The anticipated location of production units and rights-of-way.
- (7) The capacity of onshore infrastructures and assessment of the need for new onshore infrastructures to handle production.

(8) Any unique conditions in the tract requiring special protection of the environment or to insure safe development.

(9) The expected rate of development.

(10) The impact on the economic, social, and institutional structure of the affected coastal States and adjacent coastal States. These plans will require environmental impact statements in which certain information is specified.

(11) Certification of consistency with section 307 of the Coastal Zone Management Act of 1972.

H.R. 6218 also requires that all lessees submit a development plan which in turn, must be consistent with an exploration and development plan submitted to Congress by the Secretary.

The bill would also amend section 8 of the Outer Continental Shelf Lands Act, as amended, by adding a provision requiring the Department of the Interior to submit proposed leasing and development plans to Governors of affected coastal and adjacent States 60 days prior to transmittal to Congress. A Governor of an affected coastal or adjacent State could request postponement of lease sales for up to three years, if he determined that such sale would result in adverse environmental or economic impact or other damage to the State. The Secretary could then provide for a shorter postponement or deny the request for the postponement. The Governor's comments, the environmental impact statement, and proposed leasing and development would be required to be sent to Congress for resolution of conflicts.

Environmental.—The Administrator of the National Oceanographic and Atmospheric Administration, in consultation with the Secretary would have to prepare an environmental impact statement for a leased area. The bills specify certain matters to be included in the environmental impact statement for leased areas.

Subsequent to leasing and development, NOAA, in consultation with the Secretary, would also be required to monitor and conduct a study to establish baseline information concerning the status of the marine and coastal environment. NOAA could establish regulations for this procedure. The Administrator of NOAA would also be directed to provide the Secretary with detailed maps and reports concerning oil and gas resources of the OCS for the purpose of this study.

Safety.—H.R. 6218 would require the Secretary of the Department which operates the Coast Guard, with the concurrence of the Administrator of NOAA, to develop, promulgate and periodically review safety regulations for operation on the OCS. The Coast Guard would be directed to review and promulgate a complete set of safety regulations within one year of enactment. The Coast Guard would also be directed to strictly enforce and regulate and to regularly inspect all OCS operations, with once a year physical observations and periodic unannounced onsite inspections. It would also report on all major fires and spills, and submit to Congress an annual report of its enforcement responsibilities.

Federal role in exploration.—In addition, the Secretary would be directed to conduct a comprehensive feasibility study of a limited Federal exploratory program designed to obtain sufficient data and information to evaluate extent, location and potential for developing oil and gas resources of the OCS, and to transmit the results of this study,

together with his recommendation prepared in cooperation with the Administrator of NOAA, to Congress.

This study would include a projected schedule of identification and exploration activities. No action to implement the study would be considered a major Federal action for purposes of the National Environmental Policy Act.

The bill would prohibit geophysical and geological exploration on the OCS unless a permit is issued by the Secretary.

Other.—Civil and criminal penalties for violation of the bill's provisions are also provided, as is authority for citizen suits. H.R. 6218 also provides for the settling of any outstanding boundary disputes, including international disputes.

H.R. 6218 does not permit the flaring of natural gas wells unless the Secretary finds there is no practical way to obtain production or to conduct testing or overwork operations without flaring.

A report to Congress is required to be submitted within six months of enactment, listing all shut-in oil and gas wells and wells flaring natural gas on leases issued under the OCS Lands Act. The Comptroller General would be required to review and evaluate this report.

Unlike other similar bills currently pending in the House, H.R. 6218 does not contain provisions for research and development, comprehensive oil spill liability, an interim moratorium or OCS exploration and leasing, or pipeline studies.

DISCUSSION

Existing legislation provides a satisfactory framework for carrying out the essential objectives of H.R. 6218, and we are moving toward accomplishing them. The existing Outer Continental Shelf Lands Act permits substantial latitude for adjustment to changing circumstances and our program for development of the OCS can be fully carried out under the present law. Significant changes in that law could seriously delay achievement of the degree of national energy independence which we believe is vital.

Discussed more specifically below are some of the more important aspects in which we believe provisions of H.R. 6218 are either unnecessary or undesirable.

A. Scope of Leasing Program—Lease Terms.—Our present OCS leasing program would make prospects available in all frontier areas by the end of 1978. Actual sales would, of course, depend upon receipt of acceptable bids.

To carry out this program, we believe provisions limiting or otherwise modifying the scope of the OCS leasing program are undesirable at the present time. For example, requiring that the most environmentally safe areas should be leased first is too restrictive. Environmental hazards must be balanced by potential resource values. On an area-wide basis, leasing would be appropriate wherever the potential value of the energy resource is expected to exceed environmental costs. Leasing on particular tracts may be unacceptable for environmental reasons, but this would be determined on the basis of an environmental impact statement.

H.R. 6218 would require approval of and operation under a development plan as a term of the lease. The lessee's plan would have to be

consistent with the Secretary's broad development and leasing plan for the area and failure to comply with the plan would terminate the lease. Although a plan could be modified, this is too stringent a requirement because termination would be automatic. Lesser penalties will frequently be more appropriate to deal with failure to follow the plan. Termination is not necessarily in the public interest.

In contrast to the changes provided by these bills, present law provides sufficient flexibility for an appropriate balancing of energy and environmental factors. Our concern is to improve the leasing system within the present framework and in this connection the Department recently has adopted a two-tier system for designating tracts to be leased. Under it industry nominates promising areas and the public at large is invited to comment on environmental and other considerations bearing on tract selection. Based on this and its own independent review, the Department then specifies areas to be leased. In this regard, we note that the CEQ study has conducted that leasing can be carried out in the areas included in that study if appropriate safety and environmental requirements are adhered to in each area. We intend to require of the industry whatever design criteria and practices are necessary to meet the CEQ concerns.

We currently require lessees to submit development plans subsequent to the exploratory phase of the lease. We are seeking further to integrate these procedures with the coastal zone management programs being developed by the coastal States.

We do not believe it appropriate to amend the OCS Act to require further consistency or coordination with coastal zone management programs. In this regard, it should be noted that section 102(1) of H.R. 6213 the definition of "coastal zone" differs from the definition of this term in the Coastal Zone Management Act. This could cause much needless confusion.

B. Receipt of Fair Market Value for Federal OCS Oil and Gas.—The OCS Lands Act presently provides that leasing of OCS lands shall be by competitive sealed bidding on the basis of a cash bonus bid with a fixed royalty or a bid royalty with a fixed bonus, but in no instance can the royalty be less than 12.5 percent. The leases are for a 5-year term. These provisions, coupled with the Department's geological experience and the means for acquiring such information, are sufficiently flexible for institution of the most desirable alternative leasing systems to promote competition while serving the public's interest in receiving a fair return for its resources and using those resources in the most responsible manner. Several general issues bearing on receipt of fair market value are discussed below.

1. *Geographic and Geophysical Information.*—Assuring that the private sector has access to information needed to make intelligent decisions with respect to OCS energy resources is essential. Equally important is the desirability of maintaining a resource information base which allows the Government adequate knowledge of the quality and extent of the resources available for sale.

The Interior Department presently has the necessary authority and capability to pursue these objectives. The U.S. Geological Survey has access under the present OCS Lands Act to the same geophysical data as lease bidders, and has the means for gathering substantially more

offshore data than bidders. We will publish shortly proposed rules to require more rapid data disclosure. The Department also now has adequate authority to undertake stratigraphic drilling in frontier areas.

Under the rules we have proposed, geophysical data collected under exploration permits would be made public within 10 years of when-ever a lease is relinquished, whichever period is less. The Department could release data earlier based on a decision that this is necessary for the proper development of the field or area. Deep stratigraphic tests would be released 5 years after date of completion or 60 days after issuance of the first Federal lease within 50 geographic miles of the drill site. Geologic data would be released to the public in 6 months. It would not be appropriate to amend the Outer Continental Shelf Lands Act at this time to require the development of specific informational programs. The survey and study program required by H.R. 6218 would, for example, impact quite heavily and perhaps undesirably on our OCS program. Our present program, undertaken pursuant to existing authority and modified as needs change, should be satisfactory.

2. Lease Offering and Conditions.—Current Departmental practices and studies are designed to assure that the lease auction of OCS resource are competitive enough to insure receipt of fair market value. The Department has begun to use a Monte Carlo simulation model in the estimation of the value of tracts offered for lease. This simulation approach provides a more accurate representation of the uncertainties inherent in hydrocarbon estimation. Through the use of this model and improved bid rejection system, the Department is in a position to more accurately assess whether the high bids received on tracts reflect fair market value. Since the inception of the Monte Carlo program in 1974, approximately 16 percent of the high bids received have been rejected. Here too, the proposed data disclosure regulations offer benefits in putting all bidders on equal terms regarding the offshore geologic data they possess.

Proposed regulations banning joint bidding among the largest oil companies were published in the *Federal Register* on February 21, 1975. All companies, including their subsidiaries, that produce more than 1.6 million barrels of oil and natural gas equivalent a day, will be banned from bidding jointly with each other. Such companies are also precluded from making pre-lease arrangements whereby an agreement is made between two companies to share a lease if one of the two is awarded the lease. Comments on the regulations were due on March 25, 1975. The regulations are expected to be in effect for the proposed California sale, now scheduled for late summer or early fall.

Different methods of bidding for OCS leases are under constant consideration. Bonus bidding has historically been used for Federal OCS leasing. The Department is currently analyzing alternative bidding methods available to it under the OCS Lands Act of 1953. Concern has been raised over the heavy commitment of "front end" capital associated with the cash bonus, fixed royalty of 16 $\frac{2}{3}$ percent method of leasing. Options are being reviewed to accomplish the following: (1) lower front end costs, (2) assure payment of a fair share of actual production to the Federal Government and (3) ensure the maximum economic recovery of each reservoir.

Among the bidding methods being considered are:

Bonus bidding with increased royalty rates;

Royalty bidding;

Bonus bidding with net profit payments in lieu of royalties;

Net profit bidding;

Deferred bonus payments with forgiveness of the unpaid balance at the time of lease abandonment.

A test of the royalty bidding option took place in October 1974. Ten tracts were offered with eight being leased and the results are currently being analyzed.

C. Environmental and Safety programs.—The need for constantly improving our environmental protection and safety programs is clear and we concur in the broad objective of H.R. 6218 to achieve this end. The actions we are taking in this regard are more fully set forth below.

1. *Environmental Requirements.*—The National Environmental Policy Act requires the Interior Department to insure that environmental considerations are fully taken into account in implementing the OCS Lands Act.

As part of our analysis of frontier OCS areas, an extensive program of environmental studies has been initiated. The first phase occurs before leasing takes place. It involves an assessment of the biologic, physical, meteorologic and geologic conditions of an area. The establishment of this benchmark of oceanographic conditions permits us to measure any effects resulting from offshore development later. It also aids us in the preparation of environmental impact statements, in the selection of tracts and in the development of lease stipulations and criteria.

Once exploration and development takes place, an environmental monitoring program is begun. This program involves the analysis of the same variables included in the initial benchmark phase. Changes in the environment are detected and, where necessary, corrective measures are promptly developed.

In addition to the benchmark and monitoring phases, special studies such as spill trajectories, toxicity and socioeconomic analyses, are also conducted.

The funding for fiscal year 1975 equals \$20.5 million; proposed funding for fiscal year 1976 equals \$44.7 million. This program is coordinated through an Outer Continental Research Management Advisory Board which consists of representatives from the coastal States, EPA, NOAA, and agencies within the Department of the Interior.

We are also doing environmental impact statements on the entire accelerated leasing program and on each specific lease offering. We are conducting baseline studies in all frontier areas.

We agree in principle with the objective of a more complete review of the production phase of a lease after the exploratory phase but before the development is undertaken. The Department is studying the administrative steps necessary to put such a policy into force without introducing undue delay in development of the Nation's energy resources. Legal authority pursuant to the OCS Lands Act presently exists to implement such a policy.

Provisions such as those in H.R. 6218 modifying existing procedures are unnecessary and might be detrimental if transitional prob-

lems of complying with their provisions delay current studies or other actions we are currently undertaking to improve environmental protection and other requirements. We also oppose statutory provisions which specify in advance that certain Federal actions, programs or functions will or will not constitute major Federal actions for NEPA purposes.

The Federal exploration program feasibility study which H.R. 6218 would authorize by inclusion of a new section 19 of the OCS Lands Act is unnecessary. One of the analyses currently being undertaken within the Department examines Federal exploration of OCS areas. A full range of program options is under consideration including all the matters which would be subject to study under section 302.

2. *Safety Requirements.*—Adequate safety standards and enforcement procedure for the OCS are currently in operation or are in the process of being put into force. We are committed to having standards at least as strict (assuming reasonable standards) as those of adjacent States. Studies have been conducted in cooperation with the National Academy of Engineering and the National Aeronautics and Space Administration, and steps have been taken to implement the recommendations for safety of OCS operations. Proposed OCS Orders have been published for the Gulf of Alaska and the mid-Atlantic to elicit specific comments from interested parties.

Also a new section in H.R. 6218 appears to transfer functions presently performed by this Department's Geological Survey and Bureau of Land Management to NOAA and the Coast Guard. Subsequent to leasing NOAA is made the lead agency for complying with requirements of NEPA, baseline and monitoring functions. The Coast Guard would also take over present Geological Survey functions including promulgation of operating orders, standards for technology to be used and establishment of equipment and performance standards for oil spill cleanup operations. This would constitute an entirely undesirable transfer of responsibilities from agencies which already have the required expertise, to agencies which do not have this experience at this time.

D. *Public participation in OCS decisions.*—States which are most likely to be directly affected by the development of energy resources of the OCS should participate in decision making. Under current procedures, we believe that such States are adequately apprised of the activities and hazards which might be involved in OCS development and are provided with ample opportunity for participation on OCS decisions. This State participation now includes:

(a) Environmental Study Program. Representatives from the coastal States serve on the OCS Research Management Advisory Board which oversees the Bureau of Land Management's environmental study program.

(b) Development of OCS Orders. The Geological Survey consults with the States in the development of OCS Orders. These Orders provide industry with the rules and regulations to be followed in exploration and production activities on the OCS. The regulations that are now in effect have been strengthened considerably since the Santa Barbara spill. Proposed orders have been published for the Gulf of Alaska and are soon to be published for the mid-Atlantic.

(c) **Call for Nominations.** Approximately 12 months prior to a sale date, the Department publishes a request for nominations in the *Federal Register*. All interested members of the public including the adjacent States are urged to nominate specific tracts which they would want to see studied further for possible inclusion in a sale. They are also asked to designate specific tracts which should be excluded from the leasing process because of environmental conflicts.

(d) **Tract Selection.** Subsequent to receipt of the nominations, the Department makes a tentative selection of tracts. States are consulted on the issues involved in the selection process. States are again consulted before any final decision is made on tracts to be offered in a sale.

(e) **Draft Environmental Impact Statement.** The DEIS contains a detailed environmental assessment on a tract by tract basis in addition to an analysis of the general environmental conditions in the area. The States are asked to designate representatives to participate in the actual preparation of this document. This request has been made to Atlantic coast Governors and to the Governor of the State of Alaska.

(f) **Public Hearing and Comments.** After publication of the DEIS, a public hearing is held and States are invited to comment either orally or in writing. These comments are used in preparation of the Final Environmental Impact Statement.

(g) **Decision by the Secretary.** After completion of the Final EIS and a Program Decision Option Document, a decision is made by the Secretary whether to proceed with the sale and if so the composition of the sale. The Governors of affected coastal States are consulted before a final decision is made on what tracts are to be included in a sale.

(h) **Supervision of Leases.** Geological Survey monitors adherence to the OCS Orders through review of applications and proposed plans. Consideration is being given to having State personnel participate with the Geological Survey in this endeavor.

(i) **Review of Development Plan.** Under the Coastal Zone Management Act, any State which a coastal zone management plan will have to review actions which may affect land and water uses in the coastal zone. Such actions may include the approval of a development plan which is now solely the responsibility of Geological Survey.

We are opposed to the provision in H.R. 6218 which is designed to provide the Governors of coastal States with a mechanism to delay OCS oil and gas lease sales if such sales are anticipated to have adverse environmental or economic impacts. We appreciate the concern of coastal States regarding the environmental and socio-economic problems associated with OCS development and their desire to exercise some control over such development, or other things failing, to at least forestall it. The appropriate response is, however, to undertake advance planning and cooperation between Federal, State and local government along the lines of the Coastal Zone Management Act, rather than on last ditch efforts to delay leasing.

OTHER MATTERS

Oil Spill Liability.—The Administration is currently preparing legislation for submission to the Congress which would establish a comprehensive system of compensation for oil spill damages. This

system would embrace damages from OCS operations and would supplement environmental and safety standards. We expect that this proposal will be forthcoming shortly.

Distribution of OCS Revenues.—The Administration recognizes the concerns about OCS generated fiscal impact problems which have led some coastal States to propose that Federal impact assistance be available or OCS revenues be shared with the States. The Administration currently is actively analyzing the need for such assistance and is developing several alternative approaches to deal with such problems ranging from impact aid grants to formula-grant revenue sharing. However, we have no recommendation to make at this time.

CONCLUSION

H.R. 6218 deals with major issues relating to use of the energy resources of the Outer Continental Shelf. To meet our present energy needs, however, we believe that the present OCS Lands Act provides a satisfactory framework and that further legislation is undesirable or unnecessary.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 19, 1976.

HON. JOHN M. MURPHY,
*Chairman, Ad Hoc Select Committee on the Outer Continental Shelf,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Legislation relating to the Outer Continental Shelf which is now being drafted by your Committee is of deep concern to me and to the Administration. As we have often stated, many of the provisions now under consideration by the Congress are unnecessary or undesirable and, if enacted, would delay the development of OCS resources or otherwise injure the public interest. For these reasons we must strongly oppose the enactment of many of the provisions of your current committee print.

The OCS leasing program is being shaped through continuing consultation with the Congress, the States and others whose interests are affected. It is a progressive, balanced program designed to assure that the nation's energy needs are met, consistent with protection of the environment and proper response to the economic and social concerns of those who will bear the impact of OCS development. In this effort, we recognize the need for legislation to provide a comprehensive system of liability and compensation for oil spill damages and to provide financial assistance to State and local units of government which are unable to finance new physical facilities needed because the development of Federal energy resources results in rapid population increases.

The Administration has proposed legislation which has been carefully designed to deal effectively with the complexities of these problems. We urge that the Administration proposals be enacted.

This letter addresses specific features both of the legislation now under consideration by your Committee contained in the January 30, 1976 Committee Print, and of Senate bill S. 521, which may lead the President to conclude that they are unacceptable.

1. *Limitation on bonus bidding.*—Your Committee print limits the use of the bonus bid, fixed royalty leasing system to no more than two-thirds of the acreage in frontier areas; S. 521 sets an even lower limit of one half of the acreage. Our staff studies of this question, which we are supplying for your review, indicate that such a limitation would be extremely unwise. We do not object to being authorized to experiment with new bidding systems, or to using systems found to be feasible, and we would be happy to notify the Congress in advance of the details of our plans for experimentation, but it would be a serious error to limit the use of the only bidding system which we know at this time to be fundamentally satisfactory. It could lead to forced leasing of large acreages under faulty systems, and could not only delay development, but deprive the public of receipt of fair market value for the resource, reduce the efficiency of exploration and development, lead to waste of valuable energy resources, and cause unnecessarily high administrative cost.

The Administration strongly objects to the provision allowing a Congressional override, by resolution of either House, of a Secretarial decision that limiting cash bonus bidding would delay development. This is similar to provisions in other legislation which the Executive Branch has opposed because the Department of Justice has consistently found that they infringe on the constitutional responsibilities of the Executive Branch. Justice has testified against such a provision as recently as May 15, 1975, before the Senate Judiciary Subcommittee on the Separation of Powers in a hearing concerning Executive Agreements.

2. *Lease size.*—The Committee Print requires that leases cover an area designated by the Secretary on the basis of entire geological structures or traps, to the maximum extent practicable, or be comprised of a reasonable, economic production unit, as determined by the Secretary. We do not believe it is desirable to set as the norm the leasing of whole structures or traps, though we do not object to being authorized to lease in that way. We therefore urge you to remove the phrase "to the maximum extent practicable" from the text. Whole structures or traps will frequently be very large, and leasing them as units could have strong anti-competitive effects as well as prevent the use of more than one independent exploration strategy on the structure. Neither of these effects is desirable, and there should be no presumption in the language of the bill that tends to force the Secretary in that direction.

3. *Exploration plan.*—The provision for an exploration plan which the Secretary is required to prepare and implement seems to us, in the light of its purposes and the information which it is to include, to assume if not to require Federal exploration for oil and gas. Although subsection 11 (g) (3) provides that the Secretary need not include such Federal exploration in the plan, we do not know how determina-

tion of the commercial presence of oil and gas can be made with sufficient accuracy to provide a basis for the items in 11 (d) (1) through (5) without Federal exploration. The Administration is strongly opposed to mandatory Federal exploration for oil and gas. We urge you to alter the wording of this section to make it clear that full compliance with its provisions would not require Federal exploration.

4. *Mapping program.*—Both your committee print and S. 521 call for extensive map publication prior to future OCS lease sales. Our initial study of the cost of such a program suggests that for the first few years it could be as high as \$150 million per year, and could well be beyond the total capacity of existing mapping facilities. We seriously question whether the usefulness of such maps to the general public could ever justify such a massive expense. Whether any map publication justifies its cost should be a matter to be worked out in normal budgeting by reference to other priorities for use of public funds.

5. *Content of environmental impact statements.*—Your print and S. 521 both specify in great detail the content of environmental impact statements (EIS's) to be prepared in connection with OCS leasing. Passage of such provisions would amount to a major amendment of the National Environmental Policy Act of 1970. I believe such an amendment of NEPA is both unnecessary and unwise. It is unnecessary because whenever in our judgment the significant impacts of an OCS action include any of those listed in your print, they are already being analyzed in our EIS's. It is unwise because each additional requirement enacted in law may become a new and separate basis for delaying litigation. I believe that the guidelines of the Council on Environmental Quality and the interpretations of NEPA already made by the courts are fully sufficient to assure that our analysis of environmental impacts is adequate to serve the public interest. And I see no reason to single out the OCS leasing program for special restrictions under NEPA; most close students of this program, including those who consider themselves "environmentalists", regard the environmental balancing process we follow as one of the best existing examples of what NEPA calls for.

6. *Regulatory authority.*—Your committee print would require that certain OCS regulations be developed by one agency, promulgated and revised by a second, and enforced by still a third. It is hard to imagine a more certain prescription for regulatory confusion, duplication of effort, unnecessary expense, irresponsibility, and ineffectiveness. I urge you to consider that present regulatory practice has resulted in an outstanding record of safety on the OCS, and that forced changes of authority will bring new and inexperienced agencies into the system, and may well result in a decline in OCS safety. In light of the high standard of current practice, I urge you not to alter present arrangements. We oppose the requirement for use of the best available and safest technology on all new operations and wherever practicable on existing operations. Safety requirements need to be adjusted to the specific conditions of the case, and the benefits of added safety must always be balanced against the costs of achieving it. Requiring best available technology could frequently add substantial cost for little gain in safety.

7. *Advisory boards.*—Your print and S. 521 both provide for establishment of advisory boards by the governors of coastal States, and direct that any recommendation of such a board or governor must be accepted by the Secretary, unless he finds it not consistent with national security or overriding national interest. This provision goes far toward passing control of development of Federal resources to States and it goes well beyond what most State representatives indicate to us is their objective—to have their views taken seriously into consideration in Federal OCS decisions. We have provided by regulation for thorough consideration of State views at strategic points in the leasing process, and we have already established advisory boards with State representation. I believe these measures are sufficient; we are in fact now enjoying a productive and open discussion of issues with States. I urge you to consider that OCS resources are a national asset, that the benefits of developing them are national, not local, and that only a Federal official is in the proper position to balance national benefits and costs in decisionmaking about the OCS. Creating a presumption, as your print does, that State judgments about this program are better than Federal ones, would be a serious error.

8. *Development plans.*—Both S. 521 and your Committee Print require that development plans include information about facilities which are onshore and therefore outside Federal jurisdiction, and that these plans must be approved by the Secretary before development proceeds. The effect of these provisions is to require exercise of Federal permitting authority within State jurisdiction. We do not think this is wise, either from the States' viewpoint or our own. To the extent possible, basic land use decisions for State lands should be the States' responsibility. Our own regulations limit the content of the development plan to Federal jurisdiction, but provide for submission of added information to States about onshore facilities. We believe this procedure is far better than the one called for in your Committee Print.

We oppose the provision which prohibits the Secretary from requiring any modification in a development plan which would be inconsistent with an approved State coastal zone management program or with any valid exercise of authority by the State involved or any of its political subdivisions. This goes far beyond the existing provisions of the Coastal Zone Management Act which require Federal activities to be, "to the maximum extent practicable," consistent with approved State management programs. The phrase "any valid exercise of authority" would require that the Secretary's views of the public and national interest always give way to State and local views, and the phrase is so broad and vague that its full consequences are impossible to predict. Furthermore, the circumstances under which the Secretary may approve a revision of an approved plan appear to be too narrow to allow all revisions which may be desirable. For example, the Secretary should be authorized to approve revisions for the convenience of the lessee so long as they do not adversely affect the public interest.

9. *Data submission and release.*—Both your Committee print and S. 521 contain provisions concerning geophysical and geological data which could be extremely harmful to the OCS leasing program. In general I feel that this matter is so complex, and so rapidly changing as data-gathering technology develops, that the details of data sub-

mission and release should be left to Departmental regulation, and should not be enacted in statute. The term "interpretation" is not easy to define, the products of interpretation are costly to the companies concerned, and the companies' competitive position depends heavily on the confidentiality of their interpretations. For some types of interpretations, and under some circumstances, it is probably unwise or unenforceable to require their submission. I urge you to make such a requirement discretionary with the Secretary. We are confident that the interpretive capacity of the U.S. Geological Survey is sufficient to protect the public interest without a blanket requirement that all company interpretations be made available. I urge you also to give the Secretary discretion in making proprietary data available to State and local governments and advisory boards. Protection of confidentiality becomes essentially impossible otherwise; and in any case, many of these data are generally available to governments at a proportionate share of their cost.

10. *Impact Aid*.—As you know, the Administration has recently introduced a plan for Federal energy development impact aid. I believe that it more nearly fits the need for such assistance than the provisions of either S. 521 or the amendments to the Coastal Zone Act which are now under Congressional consideration and which the Administration strongly opposes. I have already urged, in a letter to the Speaker, that favorable attention be given to our proposal.

11. *Baseline studies*.—The provisions in both your Committee Print and S. 521 on environmental baseline studies should, in my opinion, be eliminated. This study program was initiated some time ago by the Interior Department, and is now being pursued vigorously. Writing it into law serves no apparent purpose, and may be disadvantageous should it later become clear that other methods of environmental investigation are preferable. The scope of the studies as described by the print is so broad as to include much information which would be of little or no value for regulating operations or evaluating a proposed development plan, but which could serve as a basis for litigation. Moreover, requiring that the studies be executed by NOAA rather than by Interior would be a serious handicap both to the studies and to the leasing program. The scientific capabilities of NOAA are now being fully used in this program: over half of the studies are being managed by NOAA under Interior direction, and many are being subcontracted by NOAA to the private sector. It is essential that these studies be designed and timed to serve Interior's decision-making needs in the OCS program, and that they be closely coordinated with it. We do not believe this can be done adequately if Interior is deprived of control over the program. We believe that the provision of your Committee Print would result in less effective, higher cost studies, delays in the leasing program, and reduced environmental protection.

12. *Joint bidding limitation*.—As you know, the Interior Department promulgated regulations last year banning joint bidding among companies with production greater than 1.6 million barrels per day. These regulations were enacted into law in the Energy Policy and Conservation Act in December. Your Committee Print would reduce the production figure from 1.6 million to 750 thousand barrels per day. Joint bidding is generally a desirable practice, because it enables companies to enter the bidding which would otherwise be barred by their

small size or by inadequate geological expertise. Our analysis indicates that it is unnecessary for two or more companies of the 1.6 million barrel per day size range to combine to achieve these advantages, but we know of no sound basis for reducing the size threshold to 750 thousand barrels a day. I urge you to strike this provision from your print, since it may seriously handicap some medium-sized firms, reduce competition for OCS leases and deprive the taxpayer of a proper return for development of the resources.

13. *OCS leasing program.*—The provision for a required 5-year leasing program provides a fertile field for delaying and harassing litigation by those opposed to OCS leasing. The program is supposed to be one that “will best meet national energy needs.” The program must consider “all of the economic, social, and environmental values of the renewable and nonrenewable resources contained in the shelf and the potential impact of oil and gas exploration on other resource values of the Outer Continental Shelf and the marine, coastal, and human environments.” The requirements of the print for timing and locating OCS activities among the OCS regions described in new Sec. 18(a) 2(A) through (G) include a great variety and volume of information that could be criticized for incompleteness or inadequacy, and that could be interpreted in ways other than those selected for the program. Furthermore, while we think that timing and location decisions should consider “laws, goals, and policies of adjacent coastal States and other affected States” we strongly oppose requiring such decisions to be based on them. The provision in new Sec. 18(a) (3) that areas with the least potential for environmental damage greatest potential for discovery of oil and gas, and least adverse impact on the coastal zone are to be leased first, to the maximum extent possible, is internally contradictory and could not be complied with by any actual schedule. The Department in making its leasing decisions considers such matters to the extent that they are relevant. Including such detailed requirements in law can only generate litigation and delay.

14. *Limitations on export.*—The Administration strongly opposes the provision requiring that exports found by the President to be in the national interest shall cease if Congress passes a concurrent resolution of disapproval within 60 calendar days of the President's finding. The Department of Justice has consistently found that such provisions infringe on the constitutional responsibilities of the Executive Branch.

We have other major concerns about your Committee Print in addition to the serious objections I have listed, and we plan to furnish these shortly to your Committee for use in its mark-up. We are firmly of the view that the deficiencies we have identified must be corrected, and my staff and I are prepared to discuss them with the Committee and its staff in detail.

We will be happy to provide any information you desire, and we will continue to advise of policy and other developments with respect to the outer continental shelf. Your proper concern for assuring that OCS resources are managed in the public interest will, I hope, not be mistakenly manifested in legislation which the President could not approve. We will be pleased to work with you to avoid such an outcome.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

THOMAS S. KLEPPE,
Secretary of the Interior.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., November 10, 1975.

Hon. JOHN M. MURPHY,
*Chairman, Ad-Hoc Select Committee on Outer Continental Shelf,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of October 14, 1975, which invited the Secretary of the Navy, Mr. Middendorf, to participate in the hearings on H.R. 6218 and to present formal testimony to your committee on November 20, 1975.

Your invitation is sincerely appreciated but the Secretary's schedule will not permit his attendance.

The proposed legislation has been thoroughly reviewed by the Department of the Navy and appropriate Navy recommendations should be reflected in the forthcoming response to you from the Office of the General Counsel, Department of Defense.

The Department of the Navy fully agrees that the development of these offshore oil and gas resources is critical to our national security. Such development is important to both civilian and Department of Defense energy requirements, insofar as they reduce our dependence on non-domestic sources of supply.

The development of plans to protect these offshore facilities from attack or hostile intervention is not an issue to be resolved solely by the Navy. It is rather an issue to be considered and resolved by the Joint Chiefs of Staff under the Secretary of Defense. As such I would expect that it will be discussed in the Department of Defense response to your committee.

The set of general questions with regard to H.R. 6218, which you appended to your request, does not refer to matters under the purview of the Department of the Navy and comment thereon is deferred to the Department of Interior and the Department of Defense witness.

If the Department of the Navy may be of further assistance to the committee, please do not hesitate to advise me.

Sincerely yours,

G. E. R. KINNAR II,
Re - Admiral, U.S. Navy, Chief of Legislative Affairs.

GENERAL COUNSEL OF THE,
DEPARTMENT OF COMMERCE,
Washington, D.C., January 20, 1976.

Hon. JOHN M. MURPHY,
*Chairman, Ad-Hoc Select Committee on the Outer Continental Shelf,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department concerning H.R. 6218, a bill "to establish a policy

for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes," to be cited as the "Outer Continental Shelf Lands Act Amendments of 1975."

Secretary Morton, in his testimony of July 17, 1975, given before the Ad Hoc Select Committee, stated the Department's reasons for opposing this legislation. A copy of the testimony is enclosed for your convenience.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our letter to the Congress from the standpoint of the Administration's program.

Sincerely,

ROBERT ELLERT, *General Counsel.*

Encl.:

STATEMENT BY HON. ROGERS C. B. MORTON

First, Mr. Chairman, I would like to comment on your initiative in establishing this Select Ad Hoc Committee. Having served in this body, I know it is a difficult matter to obtain consent for the sharing of jurisdictions among the Committees of the House.

I take the pioneering action by the House in establishing this Committee as recognition of the vital importance to this Nation of our Outer Continental Shelf resources. We very definitely need to take a comprehensive look at what is at stake in developing offshore oil and gas resources. This Committee, composed as it is of members from the Interior, Judiciary, and Merchant Marine and Fisheries Committees, seems to me to be well equipped to provide such a thorough investigation on behalf of the House.

I call to the Committee's attention the progress we have made in this country in developing offshore oil and gas resources. We have come a long way in our technological capabilities in the years since the Outer Continental Shelf Lands Act was passed (1953). We have developed a highly efficient industry which now operates throughout the world. In point of fact, the American offshore industry is the envy of many other nations now seeking to develop their own offshore resources.

And it is a productive industry. Offshore oil and gas activities in this country produced royalty, bonus and rental income totalling \$12.5 billion through 1973. The total value of the oil and gas obtained from the Outer Continental Shelf during the years 1953 to 1973 was almost \$16 billion.

We are fortunate that we now have the capability to operate efficiently and safely in ocean waters of increasing depths since development of offshore oil and gas is a critically important element in our program of energy self sufficiency.

Speedy development of these resources is one of the keystones in our plan to meet this country's energy requirements in the 1980's. Given the long lead times required and despite the vigorous research programs we are now mounting, we cannot count on new, alternate sources of energy helping very much prior to the late 1980's. I don't

need to remind you that in the meantime we are spending \$25 billion a year importing foreign oil and gas products.

It goes without saying that we must make better, more efficient use of our energy. But even the most optimistic estimates of our ability to conserve made clear the urgent need to get to work exploring and developing offshore oil and gas sources.

I want to speak briefly about several relevant Department of Commerce programs before dealing specifically with the bill before this Committee, H.R. 6218.

I have several responsibilities as Secretary which bear on the issues before you. The Department of Commerce has a mission to advise the President on Federal policies affecting the industrial and commercial aspects of the economy. The recession we have suffered, in part, is a result of having to import huge quantities of high-priced foreign oil, makes a clear case for rapid development of new domestic sources of energy for our economy's sake.

As you know, I also serve as Chairman of the Energy Resources Council. In this capacity, we are striving to do everything we can at the Federal level to clear the way for efficient and environmentally safe development of the energy supplies this country requires, both for the short-term and the long haul.

Another responsibility of the Department of Commerce, bearing directly on the bill before you, is its activities conducted by the National Oceanic and Atmospheric Administration. NOAA is the ocean fisheries agency of the Government and has the responsibility for seeing that these living marine resources are conserved and their habitats protected. As a part of its mission, NOAA also supplies the bathymetric maps and charts, descriptions of tides and currents, and other oceanic and meteorological data needed for offshore development.

We have the responsibility for weather and ocean monitoring, prediction of natural hazards, and the responsibility for the operation of national and environmental data repositories crucial to the design of offshore structures. As the civilian ocean agency of the Government, NOAA maintains the country's foremost capability in ships and aircrafts, satellites, research laboratories, and scientific expertise needed to assess the environmental consequences which might result from offshore oil and gas production.

Another major responsibility of NOAA of which I want to make special mention is the Coastal Zone Management Program. I am in hearty agreement with the objectives of this program and will do all I can to see that it is carried forward vigorously. It is, after all, the only program available to encourage and assist states in doing the kind of planning that has become absolutely essential in the Nation's coastal regions. Furthermore, it is my intention to review carefully the proposals now pending before the Congress which would strengthen the Coastal Zone Program.

The successful implementation of coastal zone management programs will enable states in local communities to prepare for the shore-side impacts which offshore operations could stimulate. I think we all share the belief that strong state coastal zone management programs are the key to permitting us to go forward with offshore exploration

and production with a minimum of environmental and socio-economic disturbance. Toward this end, Congress is just now completing action on a FY 75 supplemental appropriation request of the President to add \$3 million to the planning funds already available in the Coastal Zone Management Program specifically to assist states in dealing with the onshore impacts of OCS activity in their program development efforts.

All of us agree that the establishment of oil and gas activities in frontier areas of the Outer Continental Shelf must be approached in a different manner than has been the case in the Gulf of Mexico. In general, coastal areas adjacent to the proposed frontier lease sites have not had the kind of exposure to this industry that the Gulf area has grown up with. Also governments in these areas have not had experience in planning for and guiding the location and operation of onshore facilities.

It seems to me that the following points must be taken into account when considering the establishment of oil and gas activity in new areas of our continental shelves:

(1) We must ensure that an adequate mechanism exists whereby potentially affected coastal states have an opportunity to be heard on proposed Federal actions that affect their jurisdictions. As you may know, the Interior Department is now in the process of revamping its OCS Research Management Advisory Board to accomplish this end.

(2) Marine environmental baseline programs need to be undertaken on a timely fashion and over a sufficiently long period to accurately assess the natural resources of the region and their possible vulnerability to oil activity. Especially valuable or sensitive tracts should be removed from the lease sale.

(3) A fully adequate environmental impact statement pertaining to the lease sale and the exploration phase should be available for full public comment and criticism.

(4) The results of the exploration phase should be made available to the affected coastal states as quickly and as completely as possible, mindful of industry's proprietary rights, to assist them in their planning activity.

(5) Prior to Federal approval, field development plans describing proposed location of oil production platforms, pipelines, and onshore facilities should be made public, and should be reconciled with approved coastal zone management programs of those states that would be affected by such a development.

(6) Coastal states should be allowed sufficient time to prepare and implement coastal zone management programs prior to the initiation of the field development phase. Given the fact that the initial exploration phase in frontier areas will take at least two years, the first field development plans cannot be expected before 1977, at which time the affected coastal states plan to have their coastal zone management programs completed.

I feel that most members of the Select Committee would agree with these points. In all likelihood, any differences we might have will center around how to achieve them. In my view, most, if not all of the features mentioned above can be accomplished under existing law by appropriate changes in Department of Interior regulations and

procedures. As I think you know, serious studies are now underway within that Department to achieve these objectives. If it turns out that certain desirable changes can only be obtained through changes in the law, I will urge the Administration to support legislation to accomplish these changes.

Two additional aspects of the OCS issue should be mentioned. In my March 14 testimony before the Senate, I mentioned that studies were also underway within the Administration concerning OCS impact assistance or sharing of a portion of the revenues obtained from OCS oil and gas production with the coastal states and the matter of liability against damages caused by this oil activity. While there has been some progress in the development of the Administration's thinking concerning the revenue sharing issue, I am not yet able to report the final result. Concerning liability legislation, the Administration now plans to complete its work in the near future and to forward recommended legislation to the Congress shortly thereafter.

Before responding to the questions provided me by Chairman Murphy, I'd like to comment specifically on several portions of H.R. 6218.

Two of these are contained in Section 20 of the bill, which allows Congress to enter directly into the lease process by having a veto over proposed sale of OCS lands, and the other allows states to delay a lease sale for up to three years.

The twin delay provisions seem to me to be inappropriate on several grounds. Basically, I am opposed to them because they perpetuate antagonism between the states and the Federal Government. Because of the importance of making progress in developing our OCS resources, we must have a real spirit of cooperation among our different levels of government. In fact, I think we're now well on our way to having a basic accommodation of the views of the states and the national government on OCS matters.

I think we can work together. Allowing a three-year veto in effect by a state government is not something I believe the governors support. The National Governor's Conference in February of this year, while making many constructive suggestions about changes in OCS procedures, came out squarely for expansion of this source of energy now. Their February 20 statement approved going ahead with lease sales, for instance, because they know we have to allow exploratory drilling before we can determine whether there is any oil or gas under the Atlantic, for instance. Until exploratory wells are actually drilled, we are speculating about the size of our OCS resource.

The suggestion that Congress intervene in the lease sale process after the plans are submitted to the states seems to be undesirable. Decisions on where to conduct lease sales are highly technical, based on the best scientific and technical data on possible offshore fields, and have been successfully conducted over the years under broad Congressional authorization.

What the coastal states seek, if I understand their expressions correctly, is not the kind of veto H.R. 6218 contains, but rather an opportunity to review and carefully gauge the implications of industry-prepared field development plans after the exploration phase has been completed. Coastal states feel they must be able to review in-

dustry's intentions with regard to nearshore and onshore facilities and must have an opportunity to reconcile these plans with their coastal management programs. The Governors' Conference statement of February 20, makes this clear—"The Governors believe that it is in the public interest to promptly explore the OCS to determine the extent of energy resources that exist. However, the exploration program of an OCS tract must be separated from the decision to develop and commercially produce that tract."

I believe that the Federal consistency provision in the Coastal Zone Management Act provides an adequate tie between Federal approval of a proposed field development plan and Federally approved state coastal zone management program in the adjacent state. In my view, the present OCS law permits the kind of separation envisaged above and, as I mentioned earlier, the Interior Department is now in the process of taking a thorough look at this suggestion. My principal concern with the separation concept, of course, centers on the possible delays that could be generated. I feel strongly that any administrative or legislative change that creates this separation ought also to set a clear timetable and establish specific criteria against which the Secretary of the Interior would review and approve field development plans.

The provision in Section 19 that Federal exploratory drilling be studied seems to me to be undesirable and unlikely to produce beneficial results. While the Department of the Interior witnesses can discuss this more fully with you, I would mention that a sizable number of bonus bids are turned down as inadequate by the government, indicating that there is not blind acceptance of industry bids. Also, the Geological Survey possesses as much information as industry about resource potentials since the results of geophysical surveys and drilling are filed with it on a confidential basis. I sincerely question whether or not we want the taxpayers' money spent on the often frustrating process of exploration when we presently have a system that brings billions of dollars into the Federal treasury and is certain to bring in still more in the years ahead.

Several sections of H.R. 6218 appear to be unnecessary. Among these is the provision in Section 202 for different types of lease arrangements. The Interior Department has experimented with different bonus bid and royalty combinations and I trust will continue to explore alternate possibilities to ensure that the public derive the maximum benefit from the sale of OCS lands. Authority now exists for these alternates to be tried out.

Before concluding, I would like to discuss the provision in Section 21 calling for NOAA to conduct environmental baseline studies of areas being considered for lease sale. I can fully understand your intentions, Mr. Chairman, in including this provision in your legislation. In many ways, it makes good sense to have an outside organization responsible for undertaking the environmental assessments needed for rational and safe OCS development. Yet it is a fundamental tenant of the National Environmental Policy Act that the Federal agency responsible for taking the action (in this case, the leasing of a portion of the OCS) is also responsible for the preparation of the environmental impact statement including the acquisition of the necessary environmental data.

This is to insure that environmental considerations are taken into account in the basic decision-making process. In balance, we prefer to retain the present division of responsibility recognizing that the Department of the Interior will frequently turn to organizations such as NOAA to actually conduct the required environmental work in their behalf. In fact, in the case of the Alaskan OCS, NOAA's Environmental Research Laboratory under contract to DOI's Bureau of Land Management will be involved in a most exhaustive survey of marine and coastal resources involving a full range of government and university experts.

In conclusion, Mr. Chairman, I want again to commend the Select Committee for its study of this important problem. Your recent eleven-hour hearing on a Saturday in New Orleans, during which I understand you heard thirty witnesses and took six hundred pages of testimony is a clear indication of the committee's dedication to this important task. The Administration stands ready to work with your Committee in any way you suggest to constructively resolve any problems that remain concerning the Outer Continental Shelf oil and gas program. We know that the ultimate success of the program rests upon the cooperative efforts of the Administration, the Congress, the people of the coastal states and the communities likely to be affected and the private sector.

Thank You.

With your permission, Mr. Chairman, I would now like to submit for the record my answers to the questions that you forwarded in your letter of May 27, 1975.

RESPONSES TO QUESTIONS CONTAINED IN CHAIRMAN MURPHY'S MAY 27 LETTER

1. I believe that the Department of Commerce has adequate opportunity to make its views known during the OCS leasing process. If, as I become more familiar with Commerce programs, I find that this is not the case, I can assure you that I will work to remedy the situation as quickly as possible. At present, NOAA serves on the DOI OCS Advisory Committee I mentioned earlier. The Office of Coastal Zone Management, which you asked about specifically, has been in close contact with the officials of the Interior Department responsible for OCS policy and I can assure you that the Office of Coastal Zone Management has been a very effective proponent of the views of the coastal states in these discussions. As I have also mentioned above, NOAA has a major input into the environmental studies which precede actual lease sales. And as President Ford has publicly stated, if environmental studies determine that offshore activity poses an unacceptable risk, there will be no sale. The National Marine Fisheries Service and other parts of the Department also comment in detail on environmental impact statements prepared by the Department of the Interior preceding specific lease sales. Our comments, together with those of other Federal agencies, become a part of the record that attaches to the final EIS.

2. There are many potentially harmful impacts on our fishing industry from offshore oil and gas development. Probably the most serious threat is from the alteration that can take place in the coastal wetlands

which form the natural habitat for the great majority of our commercial species at some point in their development. Oil spill damage, pipeline dredging or other forms of alteration brought about by the offshore industry have to be carefully controlled. I might say here that the performance of the industry in this area has improved in that much more sensitivity to the value of wetland areas is now being shown than in the past.

The effects of seismic operations are generally not of lasting significance, since the industry perfected a technique of generating shock waves using rapidly expanding gases in place of the former dynamite charge technique. This approach coupled with judicious timing of seismic studies, has done much to reduce damage to marine resources. NOAA will work with the concerned States to insure that situations that might conceivably result in significant fish kills will be monitored and appropriate action taken.

The National Marine Fisheries Service does not administer a financial assistance program which would provide compensation to fishermen for loss of fishing gear, arising from OCS operations. Special legislation would be needed to permit National Marine Fisheries Service to be responsive to this need.

Shallow buried or unburied pipelines, exposed wellheads and debris from oil and gas operations do at times impair commercial fishing activities by causing nets to be fouled or damaged. The National Marine Fisheries Service believes that most of these impacts can be minimized by the use of sound engineering and pollution control practices. NOAA proposes to work with DOI authorities to the end that such principles are followed. Oil spills and continuous leaks can directly and adversely affect marine organisms particularly where relatively immobile forms such as shellfish and larval fin fish are concerned. Equally, if not more important, are the indirect adverse effects brought about by reduction of habitat productivity.

The Department is, of course, concerned over the potential impacts of oil and gas development on long-standing fishing areas, such as Bristol Bay, Alaska, and Georges Bank off the northeast coast. If oil and gas development is to occur in such areas, careful joint planning, and coordination will be required to avoid potentially serious conflicts and damages.

NOAA sees no special problems peculiar to development of offshore oil and gas in fishing areas of rugged physiographic character. Similarly, OCS development is not expected to directly affect the temperature of marine waters except to the extent that ancillary developments (i.e., powerplants, petro-chemical complexes) could use ocean waters for cooling. Clearly, the design and location of such facilities has to take account of the potential damage to important fish populations.

We do not anticipate significant conflicts with the fishing industry for port facilities, except possibly in those areas which are sparsely populated. Many coastal areas of the United States have sufficient port facilities to handle both commercial fishing vessels and OCS support craft. However, in Alaska, where most existing ports are small, facilities may be sorely taxed. In a few instances, completely new facilities to construct and service offshore rigs and platforms may be needed.

Offshore oil development could result in a movement of labor out of the fishing industry. Recent reports from Alaska, for example, have indicated that laborers are being paid extremely high wages for work in activities related to oil development. However, oil-related jobs in many cases require specialized skills which fishermen would not, in general, possess.

Oil and gas drilling rigs appear to affect fishing in several ways. Such installations do not, of course, affect the basic productivity of the adjacent ocean. Nevertheless, the rigs and platforms function as an extension of habitat for many reef-associated organisms. As such, they often provide excellent sites for marine sport fishing. On the other hand, these structures do provide an obstruction for commercial fishing activities. Clearly, if the OCS were to become cluttered with platforms and other obstructions, the adverse impacts could be great. We do not anticipate that OCS development will require substantial dredging of canals. When dredging is required for the laying of pipelines from the OCS, we expect that to the extent possible they will be placed in areas which are not critically important habitats. Siting of pipelines in non-sensitive areas, coupled with sound engineering practices, can minimize adverse environmental impacts. Here again, our people will work with Department of the Interior personnel to insure that the habitat is given appropriate consideration.

3. The National Marine Fisheries Service has been cooperating closely with the Fish and Wildlife Service in the DOI on the concerns outlined in question two. Methods of improving this cooperation are under discussion. There is awareness in both Departments of the need to utilize the expertise that each possesses to insure that the national interest is served and that the taxpayers receive full value from their investment in skilled personnel.

4. The major commercial fisheries of the United States are identified in numerous publications of the Fisheries Service. Furthermore, NMFS is now engaged in a program to substantially improve and refine our understanding concerning the location and temporal variation of the fisheries off the coasts of the United States.

5. This question deals with Section 20 which I have discussed in my testimony. It is my belief that the present system, together with the reforms under discussion, provides sufficient time and input for the states.

6. I have also covered this question in my testimony, namely, that we oppose providing governors with the authority to delay leasing for three years because of the urgent need to begin to obtain information on the location and size of oil and gas resources off our coasts. Until this is done, sensible plans both for offshore development and onshore coastal management cannot be undertaken.

7. This question needs to be understood because it raises an important question of timing. As mentioned above, we feel strongly that the leasing of frontier areas should proceed. I quoted in the testimony the National Governors Conference statement endorsing this, with their proviso that full field development plans be made available. We do not feel it necessary to tie leasing to the progress of state coastal zone management programs. Indeed, until the exploratory drilling takes place, which the leasing authorizes, states do not know whether

oil and gas deposits exist off their shores in commercial quantities and until that essential fact is determined, neither industry nor the states can make plans for the type, size and location of support facilities that will be needed.

As I mentioned, it is our belief that the present schedule, where all coastal states plan to complete coastal zone management programs by the fall of 1977, will harmonize with prompt leasing sales. That is because it will take at least two years to complete initial exploratory operations in frontier areas. Therefore, detailed field development plans would come only after the potentially affected states have approved coastal zone management programs. As I stated earlier, the location of the onshore support facilities needed for offshore production would have to be reconciled with the state-prepared and Federally approved programs.

I would add one word of warning. If the states delay, we could have a situation where offshore development and production precedes implementation of a state's coastal zone management program. This in my opinion would not be desirable and hence, I will do all in my power to support and encourage timely completion of state and coastal programs.

8. As to studies undertaken on onshore impacts, several activities are worthy of mention. Among individual state coastal zone management program efforts, there are a number of investigations underway to get solid information on what the introduction of the offshore industry into new areas will mean. A good deal of this work is being conducted with support from NOAA's Sea Grant college program. Additionally, the Office of Technology Assessment of the Congress is undertaking a substantial study which is focusing on potential onshore impacts in the New Jersey and Delaware area. Finally, NOAA is planning to join the National Science Foundation and the Department of the Interior in a major investigation of the methodology for determining onshore impacts of offshore oil and gas development.

XII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

OUTER CONTINENTAL SHELF LANDS ACT (43 U.S.C. 1331-43)

* * * * *

SEC. 2. DEFINITIONS.—When used in this Act—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term "Secretary" means the Secretary of the Interior;

[(c) The term "mineral lease" means any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and]

(c) *The term "lease" means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration for, and development and production of, deposits of oil, gas, or other minerals;*

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation[.];

(e) *The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the water's therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));*

(f) *The term "coastal State" means a State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, or Long Island Sound, or one or more of the Great Lakes, and such term includes Puerto Rico, the Virgin Islands, Guam, and American Samoa;*

(g) *The term "affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any State—*

(1) the laws of which are declared, pursuant to section 4(a)(2) of this Act, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

(2) which is or is proposed to be directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of this Act;

(3) which is receiving, or in accordance with the proposed activity, will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or

(5) in which the Secretary finds that there is, or will be, a significant risk of serious damage, due to factors such as prevailing

winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(h) The term "marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf of the United States;

(i) The term "coastal environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(j) The term "human environment" means the physical, esthetic, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, recreation, air and water, employment, and health of those affected, directly or indirectly, by activities occurring in the outer Continental Shelf of the United States;

(k) The term "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this Act;

(l) The term "exploration" means the process of searching for oil, natural gas, or other minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such resources, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in commercial quantities is made, and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

(m) The term "development" means those activities which take place following discovery of oil, natural gas, or other minerals in commercial quantities, including geophysical activity, drilling, platform construction, and operation of all on-shore support facilities, and which are for the purpose of ultimately producing the resources discovered;

(n) The term "production" means those activities which take place after the successful completion of any means for the removal of resources, including such removal, field operations, transfer of oil, natural gas, or other minerals to shore, operation monitoring, maintenance, and work-over drilling;

(o) The term "antitrust law" means—

(1) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.);

(2) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9);

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

(p) The term "fair market value" means the value of any oil, gas, or other mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period; or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary; and

(q) The term "major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 102 (2) (C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2) (C)).

[SEC. 3. JURISDICTION OVER OUTER CONTINENTAL SHELF.—(a) It is hereby declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act.

[(b) This Act shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.]

SEC. 3. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.—It is hereby declared to be the policy of the United States that—

(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;

(2) this Act shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

(4) since exploration, development, and production of the mineral resources of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

(A) such States may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts; and

(B) such States are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, mineral resources of the outer Continental Shelf;

(5) the rights and responsibilities of all States to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

SEC. 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands [and fixed structures], and all structures permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, [removing, and transporting resources therefrom], or producing resources therefrom, or any such structure (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.*

[(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this Act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.]

(2) (A) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each coastal State adjacent to the outer Continental Shelf, as in effect on the date of enactment of this paragraph, are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and those artificial islands and

structures referred to in paragraph (1) of this subsection, which would be within the area of such State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf. After such date of enactment—

(i) any change in any criminal law of such State shall be adopted as the law of the United States, for purposes of this paragraph, at the same time such change takes effect in such State; and

(ii) any change in any civil law of such State during the five-year period beginning on such date of enactment shall be adopted as the law of the United States, for purposes of this paragraph, at the end of such five-year period, and any change during any subsequent five-year period shall be adopted in the same manner at the end of the five-year period in which such change occurs.

Within one year after the date of enactment of this paragraph, the President shall determine and publish in the Federal Register projected lines extending seaward and defining each such area. The President may, prior to such determination establish procedures for settling any outstanding boundary disputes relating to the projection of such lines. All of such applicable and consistent State laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after the date of enactment of this paragraph, the President shall establish procedures for settling any outstanding international boundary dispute respecting the outer Continental Shelf, including any dispute involving international boundaries between the jurisdictions of the United States and Canada and between the jurisdictions of the United States and Mexico.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

[(b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.]

[c] (b) With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b), compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United

States, or of any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

[d] (c) For the purposes of the National Labor Relations Act, **[as amended,]** any unfair labor practice, as defined in such Act, occurring upon any artificial island or fixed structure referred to in subsection (a) *of this section* shall be deemed to have occurred within the judicial district of the **[adjacent]** *coastal State, the laws of which apply to such artificial island or structure pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the coastal State nearest the place of location of such artificial island or structure.*

[e] (d) (1) The **[head]** *Secretary* of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the *artificial* islands and structures referred to in subsection (a) or on the waters adjacent thereto, as he may deem necessary.

(2) The **[head]** *Secretary* of the Department in which the Coast Guard is operating **[may]** *shall* mark for the protection of navigation any **[such]** *artificial* island or structure **[whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof. Any person, firm, company, or corporation who shall fail or refuse to obey any of the lawful rules and regulations issued hereunder shall be guilty of a misdemeanor and shall be fined not more than \$100 for each offense. Each day during which such violation shall continue shall be considered a new offense.]** *referred to in subsection (a) whenever the owner has failed suitably to mark such island or structure in accordance with regulations issued under this Act, and the owner shall pay the cost of such marking.*

[(f)](e) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is hereby extended to **[artificial islands and fixed structures located on the outer Continental Shelf.]** *the artificial islands and structures referred to in subsection (a).*

[(g)](f) The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands and **[fixed]** structures referred to in subsection (a) or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

[SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) (1) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall

prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall apply to all operations conducted under a lease issued or maintained under the provisions of this Act. In the enforcement of conservation laws, rules, and regulations the Secretary is authorized to cooperate with the conservation agencies of the adjacent States. Without limiting the generality of the foregoing provisions of this section, the rules and regulations prescribed by the Secretary thereunder may provide for the assignment or relinquishment of leases, for the sale of royalty oil and gas accruing or reserved to the United States at not less than market value, and, in the interest of conservation, for unitization, pooling, drilling agreements, suspension of operations or production, reduction of rentals or royalties, compensatory royalty agreements, subsurface storage of oil or gas in any of said submerged lands, and drilling or other easements necessary for operations or production.

[(2) Any person who knowingly and willfully violates any rule or regulation prescribed by the Secretary for the prevention of waste, the conservation of the natural resources, or the protection of correlative rights shall be deemed guilty of a misdemeanor and punishable by a fine of not more than \$2,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, and each day of violation shall be deemed to be a separate offense. The issuance and continuance in effect of any lease, or of any extension, renewal, or replacement of any lease under the provisions of this Act shall be conditioned upon compliance with the regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or with the regulations issued under the provisions of section 6(b), clause (2), hereof if the lease is maintained under the provisions of section 6 hereof.

[(b) (1) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in section 8 (j), if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

[(2) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the

provisions of section 6 hereof, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of section 4(b) of this Act.

[(c) Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other mineral under such regulations and upon such conditions as to the application therefor and the survey, location and width thereof as may be prescribed by the Secretary, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed thereunder shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of section 4(b) of this Act.]

SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf and shall prescribe such regulations as necessary to carry out such provisions. Such regulations shall, as of the date of their promulgation, apply to all operations conducted under any lease issued or maintained under the provisions of this Act and shall be in furtherance of the findings, purposes, and policies of this Act. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant agencies of the Federal Government and of the affected States. At each stage in the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General with respect to matters which may affect competition. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

(1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the interest of conservation, to facilitate proper development of a lease, or to allow for the unavailability of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including aquatic life), to property, to any mineral deposits (in areas leased or not yet leased), or to the marine, coastal, or human environment, and for the extension of any permit or lease affected by such suspension or prohibition by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued concerning such lease or permit;

(2) for the cancellation of any lease or permit at any time, when it is determined, after hearing, that continued activity pursuant to such lease or permit would cause serious harm or damage, which would not decrease over a reasonable period of time, to life (including aquatic life), to property, to any mineral deposits (in areas leased or not yet leased), to the national security or defense, or to the marine, coastal, or human environment, except that the cancellation of any lease pursuant to such regulations shall not foreclose any claim for compensation as may be required by the Constitution of the United States or any other law;

(3) for the assignment or relinquishment of leases;

(4) for the sale of royalty, net profit share, or purchased oil and gas accruing or reserved to the United States in accordance with section 27 of this Act;

(5) for the utilization of different bidding systems in accordance with section 8(a) of this Act;

(6) for the preparation and submission of annual reports to the Congress in accordance with section 15 of this Act;

(7) for the development and enforcement of safety regulations in accordance with sections 21 and 22 of this Act;

(8) for the preparation and implementation of leasing and development programs and plans in accordance with this section and section 18 of this Act;

(9) for the procedures for citizen suits in accordance with section 23 of this Act;

(10) for the establishment of and procedures for Regional Outer Continental Shelf Advisory Boards in accordance with section 19 of this Act;

(11) for utilization, pooling, and drilling agreements;

(12) for subsurface storage of oil and gas;

(13) for drilling or easements necessary for exploration, development, and production; and

(14) for the prompt and efficient exploration and development of a lease area.

(b) The issuance and continuance in effect of any lease, or any extension, renewal, or replacement of any lease, under the provisions of this Act shall be conditioned upon compliance with the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or with the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof.

(c) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this Act, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

(d) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations

issued under this Act if the lease is issued under the provisions of section 8 hereof, or of the regulations issued under the provisions of section 6(b), clause (2), hereof, if the lease is maintained under the provisions of section 6 hereof, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of this Act.

(e) Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other mineral under such regulations and upon such conditions as to the application therefor and the survey, location, and width thereof as may be prescribed by the Secretary, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from said lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in consultation with the Administrator of the Federal Energy Administration, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of this Act.

(f) (1) The lessee shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates consistent with any rule or order issued by the President in accordance with any provision of law.

(2) If no rule or order referred to in paragraph (1) has been issued, the lessee shall produce such oil or gas, or both, at rates consistent with any regulation promulgated by the Secretary which is to deal with emergency shortages of oil or gas or which is to assure the maximum rate of production which is efficient and safe for the duration of the activity covered by the approved plan. The Secretary may permit the lessee to vary such rates if he finds that such variance is necessary.

(g) After the date of enactment of this section, no holder of any oil and gas lease issued or maintained pursuant to this Act shall be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations.

SEC. 6. MAINTENANCE OF LEASES ON OUTER CONTINENTAL SHELF.—

(a) The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the laws of such State) if—

(1) such lease, or a true copy thereof, is filed with the Secretary by the lessee or his duly authorized agent within ninety days from the effective date of this Act, or within such further period or

periods as provided in section 7 hereof or as may be fixed from time to time by the Secretary;

(2) such lease was issued prior to December 21, 1948, and would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had authority to issue such lease;

(3) there is filed with the Secretary, within the period or periods specified in paragraph (1) of this subsection, (A) a certificate issued by the State official or agency having jurisdiction over such lease stating that it would have been in force and effect as required by the provisions of paragraph (2) of this subsection, or (B) in the absence of such certificate, evidence in the form of affidavits, receipts, canceled checks, or other documents that may be required by the Secretary, sufficient to prove that such lease would have been so in force and effect;

(4) except as otherwise provided in section 7 hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and the effective date of this Act, which have not been paid in accordance with the provisions thereof, or to the Secretary or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection, and all rents, royalties, and other sums payable under such lease after the effective date of this Act, are paid to the Secretary, who shall deposit such payments in the Treasury in accordance with section 9 of this Act;

(5) the holder of such lease certifies that such lease shall continue to be subject to the overriding royalty obligations existing on the effective date of this Act;

(6) such lease was not obtained by fraud or misrepresentation;

(7) such lease, if issued on or after June 23, 1947, was issued upon the basis of competitive bidding;

(8) such lease provides for a royalty to the lessor on oil and gas of not less than $12\frac{1}{2}$ per centum and on sulphur of not less than 5 per centum in amount or value of the production saved, removed, or sold from the lease, or, in any case in which the lease provides for a lesser royalty, the holder thereof consents in writing, filed with the Secretary, to the increase of the royalty to the minimum herein specified;

(9) the holder thereof pays to the Secretary within the period or periods specified in paragraph (1) of this subsection an amount equivalent to any severance, gross production, or occupation taxes imposed by the State issuing the lease on the production from the lease, less the State's royalty interest in such production, between June 5, 1950, and the effective date of this Act and not heretofore paid to the State, and thereafter pays to the Secretary as an additional royalty on the production from the lease, less the United States' royalty interest in such production, a sum of money equal to the amount of the severance, gross production, or occupation taxes which would have been payable on such production to the State issuing the lease under its laws as they existed on the effective date of this Act;

(10) such lease will terminate within a period of not more than five years from the effective date of this Act in the absence

of production or operations for drilling, or, in any case in which the lease provides for a longer period, the holder thereof consents in writing, filed with the Secretary, to the reduction of such period so that it will not exceed the maximum period herein specified; and

(11) the holder of such lease furnishes such surety bond, if any, as the Secretary may require and complies with such other reasonable requirements as the Secretary may deem necessary to protect the interests of the United States.

(b) Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder, in accordance with (1) its provisions as to the area, the minerals covered, rentals and, subject to the provisions of paragraphs (8), (9) and (10) of subsection (a) of this section, as to royalties and as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of such State, and (2) such regulations as the Secretary may under section 5 of this Act prescribe within ninety days after making his determination that such lease meets the requirements of subsection (a) of this section: *Provided, however,* That any rights to sulphur under any lease maintained under the provisions of this subsection shall not extend beyond the primary term of such lease or any extension thereof under the provisions of such subsection (b) unless sulphur is being produced in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by such lease on the date of expiration of such primary term or extension: *Provided further,* That if sulphur is being produced in paying quantities on such date, then such rights shall continue to be maintained in accordance with such lease and the provisions of this Act: *Provided further,* That, if the primary term of a lease being maintained under subsection (b) hereof has expired prior to the effective date of this Act and oil or gas is being produced in paying quantities on such date, then such rights to sulphur as the lessee may have under such lease shall continue for twenty-four months from the effective date of this Act and as long thereafter as sulphur is produced in paying quantities, or drilling, well working, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by the lease.

(c) The permission granted in subsection (b) of this section shall not be construed to be a waiver of such claims, if any, as the United States may have against the lessor or the lessee or any other person respecting sums payable or paid for or under the lease, or respecting activities conducted under the lease, prior to the effective date of this Act.

(d) Any person complaining of a negative determination by the Secretary of the Interior under this section may have such determination reviewed by the United States District Court for the District of Columbia by filing a petition for review within sixty days after receiving notice of such action by the Secretary.

(e) In the event any lease maintained under this section covers lands beneath navigable waters, as that term is used in the Submerged Lands Act, as well as lands of the outer Continental Shelf, the provisions of this section shall apply to such lease only insofar as it covers lands of the outer Continental Shelf.

SEC. 7. CONTROVERSY OVER JURISDICTION.—In the event of a controversy between the United States and a State as to whether or not lands are subject to the provisions of this Act, the Secretary is authorized, notwithstanding the provisions of subsections (a) and (b) of section 6 of this Act, and with the concurrence of the Attorney General of the United States, to negotiate and enter into agreements with the State, its political subdivision or grantee or a lessee thereof, respecting operations under existing mineral leases and payment and impounding of rents, royalties, and other sums payable thereunder, or with the State, its political subdivision or grantee, respecting the issuance or nonissuance of new mineral leases pending the settlement or adjudication of the controversy. The authorization contained in the preceding sentence of this section shall not be construed to be a limitation upon the authority conferred on the Secretary in other sections of this Act. Payments made pursuant to such agreement, or pursuant to any stipulation between the United States and a State, shall be considered as compliance with section 6(a)(4) hereof. Upon the termination of such agreement or stipulation by reason of the final settlement or adjudication of such controversy, if the lands subject to any mineral lease are determined to be in whole or in part lands subject to the provisions of this Act, the lessee, if he has not already done so, shall comply with the requirements of section 6(a), and thereupon the provisions of section 6(b) shall govern such lease. The notice concerning "Oil and Gas Operations in the Submerged Coastal Lands of the Gulf of Mexico" issued by the Secretary on December 11, 1950 (15 F.R. 8835), as amended by the notice dated January 26, 1951 (16 F.R. 953), and as supplemented by the notices dated February 2, 1951 (16 F.R. 1203), March 5, 1951 (16 F.R. 2195), April 23, 1951 (16 F.R. 3623), June 25, 1951 (16 F.R. 6404), August 22, 1951 (16 F.R. 8720), October 24, 1951 (16 F.R. 10998), December 21, 1951 (17 F.R. 43), March 25, 1952 (17 F.R. 2821), June 26, 1952 (17 F.R. 5833), and December 24, 1952 (18 F.R. 48), respectively, is hereby approved and confirmed.

SEC. 8. LEASING OF OUTER CONTINENTAL SHELF.—[(a) In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be (1) by sealed bids, and (2) at the discretion of the Secretary, on the basis

of a cash bonus with a royalty fixed by the Secretary at not less than 12½ per centum in amount or value of the production saved, removed or sold, or on the basis of royalty, but at not less than the per centum above mentioned with a cash bonus fixed by the Secretary.] (a) (1) *The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—*

(A) *cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;*

(B) *variable royalty bid based on a per centum of the production saved, removed, or sold, with a cash bonus as determined by the Secretary;*

(C) *cash bonus bid with diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;*

(D) *cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;*

(E) *fixed cash bonus with the net profit share reserved as the bid variable;*

(F) *cash bonus bid with a royalty at no less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;*

(G) *cash bonus bids for 1 per centum shares of an undivided working interest in the lease area, such shares to be awarded at a price which is equal to the average price per share of the highest responsible qualified bids tendered for not more than 100 per centum of the lease area, with a fixed share of the net profits derived from the production of oil and gas pursuant to a lease to be determined by the Secretary; or*

(H) *cash bonus bids for 1 per centum shares of an undivided working interest in the lease area, such shares to be awarded at a price which is equal to the average price per share of the highest responsible qualified bids tendered for not more than 100 per centum of the lease area, and with a fixed or diminishing royalty based upon the production derived from operation pursuant to the lease.*

(2) *The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years from the date of the lease sale or no*

later than the date of the authorization of development and production, whichever date first occurs.

(3) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

(4) At least ninety days prior to notice of any lease sale under subparagraphs (D), (E), (F), and (G) of paragraph (1), the Secretary shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee. In determining the attribution of profits as between oil and gas, costs shall be allocated proportionately to the value of the respective amount of oil and gas produced.

(5) (A) In the case of any lease area offered for sale pursuant to subparagraph (G) or (H) of paragraph (1), if the accepted bid per share of any person for a per centum working interest in such lease area is less than the average price per share of all accepted bids, and such person does not, within such time as the Secretary shall by regulation prescribe, agree to pay such price, then—\

(i) the Secretary shall return to such person any deposit made with respect to such bid; and

(ii) any right acquired and any obligation incurred by such person with respect to such bid shall be deemed to be canceled.

(B) (i) In the event the Secretary sells less than 100 per centum of the interest in the lease area offered under subparagraph (G) or (H) of paragraph (1), he shall offer the additional shares to the bidders who purchased shares pursuant to the initial bidding process. The Secretary shall sell such additional shares to the bidders who have elected to purchase under this clause, except that the maximum number of additional shares which any such bidder may purchase shall be in proportion to his bidden interest.

(ii) To the extent that any per centum of the interest in the lease area offered under such subparagraph (G) or (H) remains unsold after the Secretary uses the procedure required by clause (i) of this subparagraph, he shall repeat such procedure for such period of time as he determines to be reasonable.

(iii) To the extent that any per centum of the interest in the lease area offered under such subparagraph (G) or (H) remains unsold after the Secretary uses the procedure required under clauses (i) and (ii) of this subparagraph, the Secretary shall offer any remaining shares for sale to the highest interested bidder whose bid was not accepted in the initial bidding process, except that any such bidder may not purchase a number of shares which exceeds the number for which he originally bid. The Secretary shall repeat such procedure for such period of time as he determines to be reasonable.

(iv) Any additional shares of the interest in a lease area which are sold by the Secretary pursuant to this subparagraph shall be sold at a price equal to the price at which shares of the interest in such lease area were sold pursuant to the initial bidding process.

(C) *The Secretary shall, by regulation, provide for the cancellation of any lease sale held pursuant to subparagraph (G) or (H) of paragraph (1), if the total amount to be paid for all shares sold does not represent a fair return to the Federal Government.*

(D) *The Secretary shall establish standards and procedures for the formation of a joint working group in an area leased pursuant to subparagraph (G) or (H) of paragraph (1), and shall approve one or more operators for, and the terms of management of, activities on such lease area. The United States, represented by the Secretary, shall be considered a nonvoting party to any joint working group formed pursuant to such standards and procedures.*

(6) (A) *The Secretary shall utilize the bidding alternatives from among those authorized by this subsection, in accordance with subparagraphs (B) and (C) of this paragraph, so as to accomplish the purposes and policies of this Act, including (i) providing a fair return to the Federal Government, (ii) increasing competition, (iii) assuring competent and safe operations, (iv) avoiding undue speculation, (v) avoiding unnecessary delays in exploration, development, and production, (vi) discovering and recovering oil and gas, (vii) developing new oil and gas resources in an efficient and timely manner, and (viii) limiting administrative burdens on government and industry. In order to select a bid to accomplish these purposes and policies, the Secretary may, in his discretion, require each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding alternatives set forth in paragraph (1) of this subsection.*

(B) *During the five-year period commencing on the date of enactment of this subsection, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and national policies of this Act, require each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random or determined by the Secretary to be desirable for the acquisition of valid statistical data and otherwise consistent with the provisions of this Act.*

(C) (i) *Except as provided in clause (ii), the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection shall not be applied to more than 90 per centum of the total area offered for lease each year, during the five-year period beginning on the date of enactment of this subsection, in each region where there has been no development of oil and gas prior to October 1, 1975, including the outer Continental Shelf region off southern California outside the Santa Barbara Channel.*

(ii) *If, in any year following the date of enactment of this subsection, the Secretary finds that compliance with the limitation set forth in clause (i) would unduly delay efficient development of the oil and gas resources of the outer Continental Shelf, result in less than a fair return to the Federal Government, or result in a reduction of competition, he shall submit to the Senate and House of Representatives a report stating his specific findings and detailed reasons therefor. The*

Secretary may thereafter, for that year, exceed such limitation if both the Senate and House of Representatives pass a resolution of approval of the Secretary's finding within thirty days after receipt of such report (not including days when Congress is not in session).

(D) Within six months after the end of each fiscal year, the Secretary shall report to the Congress, as provided in section 15 of this Act, with respect to the use of the various bidding options provided for in this subsection. Such report shall include—

(i) the schedule of all lease sales held during such year and the bidding system or systems utilized;

(ii) the schedule of all lease sales to be held the following year and the bidding system or systems to be utilized;

(iii) the benefits and costs associated with conducting lease sales using the various bidding systems;

(iv) if applicable, the reasons why a particular bidding system has not been or will not be utilized;

(v) if applicable, the reasons why more than 90 per centum of the area leased in the past year, or to be offered for lease in the upcoming year, was or is to be leased under the bidding system authorized by subparagraph (A) of paragraph (1) of this subsection; and

(vi) an analysis of the capability of each bidding system to accomplish the purposes and policies stated in subparagraph (A) of this paragraph.

(7) The Secretary may, by regulation, permit submission of bids made jointly by or on behalf of two or more persons for an oil and gas lease under this Act unless—

(A) more than one of the joint bidders, directly or indirectly, controls or is chargeable worldwide with an average daily production of one million six hundred thousand barrels a day or more, or the equivalent, in crude oil, natural gas, and liquefied petroleum products; or

(B) the bidding system is one authorized by subparagraph (G) or (H) of paragraph (1) of this subsection and joint bidding is not specifically found by the Secretary to be necessary to promote competition.

[(b) An oil and gas lease issued by the Secretary pursuant to this section shall (1) cover a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, (2) be for a period of five years and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon, (3) require the payment of a royalty of not less than 12½ per centum, in the amount or value of the production saved, removed, or sold from the lease, and (4) contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease.]

(b) An oil and gas lease issued pursuant to this section shall—

(1) cover an area designated by the Secretary on the basis of entire geological structures or traps, or be comprised of a reasonable, economic production unit, as determined by the Secretary;

(2) be for a period of five years, and may be extended for a period of five additional years if the Secretary finds such exten-

sion is necessary to encourage exploration and development in areas of unusually deep water or adverse weather conditions, and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations, as approved by the Secretary, are conducted thereon, except that no such extension shall be granted if the Secretary finds that the lessee has not exercised due diligence in the maximum, efficient, and safe development of all wells and resources pursuant to the lease;

(3) require the payment of amount or value as determined by one of the bidding procedures set forth in subsection (a) of this section;

(4) entitle the lessee to explore, develop, and produce the oil and gas resources contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan required by this Act;

(5) contain a provision that the Secretary shall, in the absence of any applicable rule or order issued by the President and under conditions defined in applicable regulations prescribed by the Secretary, have the right to require increased production under such lease for purposes of dealing with emergency shortages of oil or gas or other national emergencies;

(6) provide for suspension or cancellation of the lease pursuant to section 5 of this Act; and

(7) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease.

(c) No lease may be issued for an initial five-year period or extended for five additional years, until at least thirty days after the Secretary notifies the Attorney General of the United States and the Federal Trade Commission of the proposed issuance or extension. Such notification shall contain such information as the Attorney General and the Federal Trade Commission may require in order to advise the Secretary as to whether such lease or extension would create or maintain a situation inconsistent with the antitrust laws.

(d) No lease may be issued or extended if the Secretary finds that an applicant for a lease, or a lessee, is not meeting due diligence requirements on other leases.

(e) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(f)(1) At the time of soliciting nominations for the leasing of lands within three miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of any such State—

(A) an identification and schedule of the areas and regions offered for leasing;

(B) all information concerning the geographical, geological, and ecological characteristics of such regions;

(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

(D) an identification of any field, geological structure, or trap located within three miles of the seaward boundary of a coastal State.

(2) *Upon receipt of nominations for any lands within three miles of the seaward boundary of any coastal State, the Secretary shall offer the Governor of such coastal State the opportunity to jointly lease any area which the Secretary approves for lease which may contain a field, geological structure, or trap which may be located within both Federal and State owned lands.*

(3) *Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to jointly lease any such area. If the Governor accepts the offer, the Secretary and Governor shall jointly offer such area for lease under mutually acceptable terms. If the Governor declines the offer, the Secretary may lease the federally owned portion of such area in accordance with this Act.*

(4) *All bonuses, royalties, rents, and net profit shares obtained pursuant to a lease for lands within three miles of the seaward boundary of any coastal State, whether or not such lease is issued jointly by the Secretary and the Governor of such coastal State, shall be placed in an escrow account until such time as the Secretary and the Governor of such coastal State determine, on the basis of geological or other information, the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State.*

[(c)] (g) In order to meet the urgent need for further exploration and development of the sulphur deposits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of subsection (a) of section 6 of this Act, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

[(d)] (h) A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production or value of the sulphur at the wellhead, and (4) contain such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

[(e)] (i) The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

[(f)] (j) Notice of sale of leases, and the terms of bidding, authorized by this section shall be published at least thirty days before the

date of sale in accordance with rules and regulations promulgated by the Secretary.

[(g)] (k) All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 9 of this Act.

[(h)] (l) The issuance of any lease by the Secretary pursuant to this Act, or the making of any interim arrangements by the Secretary pursuant to section 7 of this Act shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

[(i)] (m) The Secretary may cancel any lease obtained by fraud or misrepresentation.

[(j)] Any person complaining of a cancellation of a lease by the Secretary may have the Secretary's action reviewed in the United States District Court for the District of Columbia by filing a petition for review within sixty days after the Secretary takes such action.]

SEC. 9. DISPOSITION OF REVENUES.—All rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.

SEC. 10. REFUNDS.—(a) Subject to the provisions of subsection (b) hereof, when it appears to the satisfaction of the Secretary that any person has made a payment to the United States in connection with any lease under this Act in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment, or within ninety days after the effective date of this Act. The Secretary shall certify the amounts of all such repayments to the Secretary of the Treasury, who is authorized and directed to make such repayments out of any moneys in the special account established under section 9 of this Act and to issue his warrant in settlement thereof.

(b) No refund of or credit for such excess payment shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts upon which the determination of the Secretary was made is submitted to the President of the Senate and the Speaker of the House of Representatives for transmittal to the appropriate legislative committee of each body, respectively: *Provided*, That if the Congress shall not be in session on the date of such submission or shall adjourn prior to the expiration of thirty days from the date of such submission, then such payment or credit shall not be made until thirty days after the opening day of the next succeeding session of Congress.

[SEC. 11. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS.—Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.]

SEC. 11. OUTER CONTINENTAL SHELF OIL AND GAS EXPLORATION.—

(a) (1) Any agency of the United States, and any person whom the Secretary by permit or regulation may authorize, may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations pursuant to any lease issued or maintained pursuant to this Act, and which are not unduly harmful to the marine environment.

(2) The provisions of paragraph (1) of this subsection shall not apply to any person conducting explorations pursuant to an approved exploration plan on any area under lease to such person pursuant to the provisions of this Act.

(b) Beginning ninety days after the date of enactment of this subsection, no exploration pursuant to any oil and gas lease issued or maintained under this Act may be undertaken by the holder of such lease, except in accordance with the provisions of this section.

(c) (1) Prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act, regulations prescribed under this Act, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that if the Secretary determines that (A) any proposed activity under such plan would result in any condition which would permit him to suspend such activity pursuant to regulations prescribed under section 5(a) (1) of this Act, and (B) such proposed activity cannot be modified to avoid such condition, he may delay the approval of such plan.

(2) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

(A) a schedule of anticipated exploration activities to be undertaken;

(B) a description of equipment to be used for such activities;

(C) the general location of each well to be drilled; and

(D) such other information deemed pertinent by the Secretary.

(3) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

(d) The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.

(e) (1) If a revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section.

(2) *All exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan.*

(f) *The Secretary may, within ninety days after the date of enactment of this section, provide for the approval under subsection (c) of any plan submitted prior to such date of enactment which he finds is in substantial compliance with the provisions of such subsection, and may require the submission of any additional information necessary to bring such plan into such compliance.*

(g) *At least once in each frontier area, the Secretary shall seek qualified applicants to conduct geological explorations, including core and test drilling, for oil and gas resources in those areas and subsurface geological structures of the outer Continental Shelf which the Secretary, upon the basis of information available to him and advice of the Geological Survey of the Department of the Interior, regards as having the greatest likelihood of containing significant oil and gas accumulations.*

SEC. 12. RESERVATIONS.—(a) The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.

(b) In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of any mineral produced from the outer Continental Shelf.

(c) All leases issued under this Act, and leases, the maintenance and operation of which are authorized under this Act, shall contain or be construed to contain a provision whereby authority is vested in the Secretary, upon a recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after the effective date of this Act, to suspend operations under any lease; and all such leases shall contain or be construed to contain provisions for the payment of just compensation to the lessee whose operations are thus suspended.

(d) The United States reserves and retains the right to designate by and through the Secretary of Defense, with the approval of the President, as areas restricted from exploration and operation that part of the outer Continental Shelf needed for national defense; and so long as such designation remains in effect no exploration or operations may be conducted on any part of the surface of such area except with the concurrence of the Secretary of Defense; and if operations or production under any lease theretofore issued on lands within any such restricted area shall be suspended, any payment of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operation and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

(e) All uranium, thorium, and all other materials determined pursuant to paragraph (1) of subsection (b) of section 5 of the Atomic Energy Act of 1946, as amended, to be peculiarly essential to the production of fissionable material, contained, in whatever concentration,

in deposits in the subsoil or seabed of the outer Continental Shelf are hereby reserved for the use of the United States.

(f) The United States reserves and retains the ownership of and the right to extract all helium, under such rules and regulations as shall be prescribed by the Secretary, contained in gas produced from any portion of the outer Continental Shelf which may be subject to any lease maintained or granted pursuant to this Act, but the helium shall be extracted from such gas so as to cause no substantial delay in the delivery of gas produced to the purchaser of such gas.

SEC. 13. NAVAL PETROLEUM RESERVE EXECUTIVE ORDER REPEALED.—Executive Order Numbered 10426, dated January 16, 1953, entitled "Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve", is hereby revoked.

SEC. 14. PRIOR CLAIMS NOT AFFECTED.—Nothing herein contained shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however*, That nothing herein contained is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact applies to the lands subject to this Act or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything herein contained.

[SEC. 15. REPORT BY SECRETARY.—As soon as practicable after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing the amounts of all moneys received and expended in connection with the administration of this Act during the preceding fiscal year.]

SEC. 15. ANNUAL REPORT BY SECRETARY TO CONGRESS.—*Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives the following reports:*

(1) *A report on the leasing and production program in the outer Continental Shelf during such fiscal year, which shall include—*

(A) *a detailed accounting of all moneys received and expended;*

(B) *a detailed accounting of all exploration, exploratory drilling, leasing, development, and production activities;*

(C) *a summary of management, supervision, and enforcement activities;*

(D) *a list of all shut-in and flaring wells; and*

(E) *recommendations to the Congress (i) for improvements in management, safety, and amount of production from leasing and operations in the outer Continental Shelf, and (ii) for resolution of jurisdictional conflicts or ambiguities.*

(2) *A report, prepared after consultation with the Attorney General, with recommendations for promoting competition in the leasing of outer Continental Shelf lands, which shall include*

any recommendations or findings by the Attorney General and any plans for implementing recommended administrative changes and drafts of any proposed legislation, and which shall contain—

(A) an evaluation of the competitive bidding systems permitted under the provisions of section 8 of this Act, and, if applicable, the reasons why a particular bidding system has not been utilized;

(B) an evaluation of alternative bidding systems not permitted under section 8 of this Act, and why such system or systems should or should not be utilized;

(C) an evaluation of the effectiveness of restrictions on joint bidding in promoting competition and, if applicable, any suggested administrative or legislative action on joint bidding;

(D) an evaluation of present measures and a description of any additional measures to encourage entry of new competitors; and

(E) an evaluation of present measures and a description of additional measures to increase the supply of oil and gas to independent refiners and distributors.

SEC. 16. APPROPRIATIONS.—There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 17. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby.

SEC. 18. OUTER CONTINENTAL SHELF LEASING PROGRAM.—*(a) The Secretary, pursuant to procedures set forth in subsection (c), shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the findings, purposes, and policies of this Act. The leasing program shall indicate as precisely as possible the size, timing, and location of leasing activity which will best meet national energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:*

(1) Management of the outer Continental Shelf shall be conducted in a manner which considers all of the economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, intracoastal navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

(F) laws, goals, and policies of affected States;

(G) policies and plans promulgated by coastal States pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(H) recommendations and advice given by any Regional Outer Continental Shelf Advisory Board established pursuant to this Act; and

(I) whether the oil and gas producing industry has sufficient resources, including equipment and capital, to bring about the exploration, development, and production of oil and gas in such regions in an expeditious manner.

(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

(4) Leasing activities shall be conducted to assure receipt of fair market value for the oil and gas owned by the Federal Government.

(b) The leasing program shall include estimates of the appropriations and staff required to—

(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

(2) analyze and interpret the exploratory data and any other information which may be compiled under the authority of this Act;

(3) conduct environmental baseline studies and prepare any environmental impact statement required in accordance with this Act and with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirements of applicable law and regulations, and with the terms of the lease.

(c) (1) Within nine months after the date of enactment of this section, the Secretary shall submit to the Congress and to the Attorney General, and publish in the Federal Register, a proposed leasing program.

(2) Within ninety days after the date of publication of a proposed leasing program, the Attorney General shall submit comments on the anticipated effects of such program upon competition, and any State,

local government, Regional Outer Continental Shelf Advisory Board, or other person may submit comments and recommendations as to any aspect of the program.

(3) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or local government or Regional Advisory Board was not accepted.

(4) After the leasing program has been approved by the Secretary, or after June 30, 1977, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

(d) The Secretary shall review the leasing program approved under this section at least once each year, and he may revise and reapprove such program, at any time, in the same manner as originally developed.

(e) The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(2) public notice of and participation in development of the leasing program;

(3) review by State and local governments which may be impacted by the proposed leasing;

(4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

(5) coordination of the program with the management program being developed by any State for approval pursuant to section 305 of the Coastal Zone Management Act of 1972 and to assure consistency with the management program of any State which has been approved pursuant to section 306 of such Act.

Such procedures shall be applicable to any revision or reapproval of the leasing program.

(f) The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this Act. The Secretary shall maintain the confidentiality of all proprietary data or information for such period of time as is provided for in this Act, established by regulation, or agreed to by the parties.

(g) The heads of all Federal departments and agencies shall provide the Secretary with any nonproprietary information he requests to assist him in preparing the leasing program. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

SEC. 19. REGIONAL OUTER CONTINENTAL SHELF ADVISORY BOARDS.—

(a) *The Governors of coastal and affected States may establish Regional Outer Continental Shelf Advisory Boards for their regions with such membership as they may determine, after consultation with the Secretary and the Secretary of Commerce.*

(b) *Representatives of the Secretary, the Secretary of Commerce, the Administrator of the Federal Energy Administration, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard, the Administrator of the Environmental Protection Agency, and the Administrator of the Occupational Safety and Health Administration shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section.*

(c) *Each Board established pursuant to subsection (a) shall advise the Secretary on all matters relating to outer Continental Shelf oil and gas development, including development of the leasing program required by section 18 of this Act, approval of development and production plans required pursuant to section 25 of this Act, implementation of baseline and monitoring studies, and the preparation of environmental impact statements prepared in the course of the implementation of the provisions of this Act.*

(d) *If any Regional Advisory Board or the Governor of any affected State—*

(1) makes specific recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan; and

(2) submits such recommendations to the Secretary within sixty days after receipt of notice of such proposed lease sale or of such development and production plan,

the Secretary shall accept such recommendations, unless he determines they are not consistent with national security or the overriding national interest. For purposes of this subsection, a determination of overriding national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner, consistent with the findings, purposes, and policies of this Act. To the extent that recommendations from State Governors or Regional Advisory Boards conflict with each other, the Secretary shall accept such recommendations which he finds to be the most consistent with the national interest. If the Secretary finds that he cannot accept recommendations made pursuant to this subsection, he shall communicate, in writing, to such Governor or such Board the reasons for rejection of such recommendations.

SEC. 20. BASELINE AND MONITORING STUDIES.—(a) (1) *The Secretary of Commerce, in cooperation with the Secretary, shall conduct a study of any area or region included in any lease sale in order to establish baseline information concerning the status of the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas development in such area or region.*

(2) *Each study required by paragraph (1) shall be commenced not later than six months from the date of enactment of this section with respect to any area or region where a lease sale has been held*

before such date of enactment, and not later than six months prior to the holding of a lease sale with respect to any area or region where no lease sale has been held before such date of enactment. The Secretary of Commerce may utilize information collected in any study prior to the date of enactment of this section in conducting any such study.

(3) The Secretary of Commerce shall, after being notified of the submission of any development and production plan in an area or region under study, complete such study and submit it to the Secretary prior to the date for final approval of any development and production plan required by section 25 of this Act for any lease area. Failure of the Secretary of Commerce to complete any such study in a lease area shall not, in itself, be a basis for precluding the approval of a development and production plan by the Secretary.

(4) In addition to developing baseline information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota resulting from chronic low level pollution or large spills associated with outer Continental Shelf production, from the introduction of drill cuttings and drilling muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

(b) Subsequent to the leasing and developing of any area or region, the Secretary of Commerce shall conduct such additional studies to establish baseline information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

(c) The Secretary of Commerce shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies or are monitoring the affected human, marine, or coastal environment, the Secretary of Commerce may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary of Commerce may also utilize information obtained from any State or local government entity, or from any person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary of Commerce may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

(d) As soon as practicable after the end of each fiscal year, the Secretary of Commerce shall submit to the Secretary and to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this Act on the human, marine, and coastal environments.

SEC. 21. SAFETY REGULATIONS.—(a) (1) Safety regulations which apply to the construction and operation of any fixed structure and artifi-

cial island on the outer Continental Shelf shall be promulgated and periodically revised. Such regulations shall be developed by the Secretary and—

(A) the Administrator of the Environmental Protection Agency or the Secretary of Commerce, or both, for the protection of the marine and coastal environments;

(B) the Secretary of the Army or the Secretary of the Department in which the Coast Guard is operating, or both, for the avoidance of navigational hazards in the waters above the outer Continental Shelf; and

(C) the Secretary of Labor or the Secretary of the Department in which the Coast Guard is operating, or both, for occupational safety and health.

(2) In promulgating regulations under this section, the Secretary shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technology, economically achievable, wherever failure of equipment would have a significant effect on occupational or public health, safety, or the environment.

(b) Upon the date of enactment of this section, the National Academy of Engineering shall commence a study of the adequacy of existing safety regulations and of technology, equipment, and techniques for operations with respect to the outer Continental Shelf, including the subjects listed in subsection (a) of this section. Not later than nine months after the date of enactment of this section, the results of such study and recommendations for improved safety regulations shall be submitted to the Congress, the Secretary, and the Secretary of the Department in which the Coast Guard is operating.

(c) (1) Within one year after the date of enactment of this section, the applicable Federal officials, in consultation with other affected Federal agencies and departments, shall complete a review of existing safety regulations, consider the results and recommendations of the study required by subsection (b), and promulgate a complete set of safety regulations (which may incorporate outer Continental Shelf orders) which shall apply to operations on the outer Continental Shelf or any region thereof. Any safety regulation in effect on the date of enactment of this section which such officials find should be retained shall be promulgated pursuant to the provisions of this section, but shall remain in effect until so promulgated. No safety regulation (other than a field order) promulgated pursuant to this subsection shall reduce the degree of safety or protection to the environment afforded by safety regulations previously in effect.

(2) Within sixty days after the date of enactment of this section, the Secretary of Labor shall promulgate interim regulations or standards pursuant to the Occupational Safety and Health Act of 1970 applying to diving activities in the waters above the outer Continental Shelf, and to other unregulated hazardous working conditions for which he, in consultation with the Secretary and the Secretary of the Department in which the Coast Guard is operating, determines such regulations or standards are necessary. Such regulations or standards may be modified from time to time as necessary, and shall remain in effect until final regulations or standards are promulgated.

(d) *Nothing in this section shall affect or duplicate any authority provided by law to the Secretary of Transportation to establish and enforce pipeline safety standards and regulations.*

(e) *The Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any agency or department of the Federal Government and applicable to activities on the outer Continental Shelf. Such compilation shall be revised and updated annually.*

SEC. 22. ENFORCEMENT.—(a) *The Secretary and the Secretary of the Department in which the Coast Guard is operating shall strictly enforce safety and environmental regulations promulgated pursuant to this Act. The Secretary and the Secretary of Labor shall strictly enforce occupational and public health regulations promulgated pursuant to this Act. All operations authorized pursuant to this Act shall be regularly inspected for purposes of enforcing applicable regulations.*

(b) *All holders of leases and permits under this Act shall—*

(1) *be responsible jointly with any employer or subcontractor for the maintenance of occupational safety and health, environmental protection, and other safeguards, in accordance with regulations intended to protect persons, property, and the environment on the outer Continental Shelf pursuant to this Act, and any other Act applicable to activities in or on the outer Continental Shelf; and*

(2) *allow prompt access, at the site of any operation subject to safety regulations, to any inspector, and provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.*

(c) *The Secretary, with the concurrence of the Secretary of Labor and the Secretary of the Department in which the Coast Guard is operating, shall, within one hundred and twenty days after the date of enactment of this section, promulgate regulations applicable to the outer Continental Shelf to provide for representatives of the Federal Government to undertake—*

(1) *physical observation, at least twice each year, of all installations, fixed or mobile, including rigs, platforms, diving boats, and apparatus;*

(2) *the testing of all safety equipment designed to prevent or ameliorate occupational hazards, blowouts, fires, spillages, or other major accidents; and*

(3) *periodic onsite inspection without advance notice to the lessee or permittee, to assure compliance with occupational and public health, safety, or environmental protection regulations.*

(d) (1) *The Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this Act, and he may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil over a period of thirty days. All holders of leases or permits issued or maintained under this Act shall cooperate with such Secretary in the course of any such investigation.*

(2) *The Secretary of Labor shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this Act, and may, in this discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this Act shall cooperate with such Secretary in the course of any such investigation.*

(3) *For purposes of carrying out their responsibilities under this section, the Secretary, the Secretary of Labor, and the Secretary of the Department in which the Coast Guard is operating may be agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal agency.*

(e) *The Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating shall consider any allegation from any person of the existence of a violation of any safety regulation issued under this Act. Any such Secretary who receives an allegation shall respond to such allegation within thirty days, and submit his findings within ninety days, after receipt of such allegation, stating whether or not such alleged violation exists and, if so, what action has been or will be taken.*

(f) *In any investigation conducted pursuant to this section, the Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process as in the United States district court. Such Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.*

(g) *The Secretary shall, after consultation with the Secretary of Labor and the Secretary of the Department in which the Coast Guard is operating, include in his annual report to Congress required by section 15 of this Act the number of violations of safety regulations alleged by any person, the investigations undertaken, the results of such investigations, the number of proven violations of safety regulations (whether through such allegation and investigation, or in any other manner), the names of the violators, and the action taken with respect to such violators.*

(h) *Subject to judicial review, whenever the Secretary finds, after notice and a hearing, that the owner or operator of any lease—*

(1) has, by a repeated course of conduct, failed to comply with safety regulations promulgated under section 21 of this Act, and such failures have resulted in a clear and present danger to occupational or public health, safety, or the environment; or

(2) has established an overall pattern of failing to comply, without lawful justification, with regulations which are to assure the maximum, efficient, and safe development of such lease or leases; the Secretary shall cancel any such lease or leases which are the subject matter of such violations.

SEC. 23. CITIZEN SUITS, COURT JURISDICTION, AND JUDICIAL REVIEW.—

(a) (1) *Except as provided in this section, any person having an inter-*

est which is or can be adversely affected may commence a civil action on his own behalf—

(A) against any person, including the United States, and any other government instrumentality or agency for any alleged violation of any provision of this Act or any regulation promulgated under this Act, or of the terms of any permit or lease issued by the Secretary under this Act; and

(B) against any Federal Government official referred to in section 21(a)(1) of this Act where there is alleged a failure of such official to perform any act or duty under this Act which is not discretionary.

(2) No action may be commenced—

(A) under subsection (a)(1)(A) of this section—

(i) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the appropriate Federal official and to any alleged violator; and

(ii) if such official or the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States with respect to such matter, but in any such action any person adversely affected or aggrieved may intervene as a matter of right; or

(B) under subsection (a)(1)(B) of this section prior to sixty days after the plaintiff has given notice of such action, in writing under oath, to the Federal Government official, in such manner as such official shall by regulation prescribe, except that such action may be brought immediately after such notification in any case in which the violation alleged constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

(3) In any action commenced pursuant to this section, the appropriate Federal official or the Attorney General, if not a party, may intervene as a matter of right.

(4) A court, in issuing any final order in any action brought pursuant to subsection (a)(1) or subsection (c) of this section, may award costs of litigation, including reasonable attorneys fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(5) Except as provided in subsection (c) of this section, nothing in this section shall restrict any right which any person or class of persons may have under this or any other Act to seek enforcement of any provision of this Act and any regulation promulgated under this Act, or to seek any other relief, including relief against the appropriate Federal official.

(b) Except as provided in subsection (c) of this section, the United States district courts shall have jurisdiction of cases and controversies arising out of, or in connection with (1) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the natural resources of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such natural resources, or (2) the cancellation, suspension, or termina-

tion of a lease or permit under this Act. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place where the cause of action arose.

(c) (1) Any action of the Secretary to approve a leasing program pursuant to section 18 of this Act shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia.

(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this Act shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.

(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review of the Secretary's action within sixty days after the date of such action, and (D) promptly transmits copies of the petition to the Secretary and to the Attorney General of the United States.

(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a).

(5) The Secretary shall file in the appropriate court the record of any public hearings required by this Act and any additional information upon which the Secretary based his decision, as required by section 2112 of title 28, United States Code. Specific objections to the action of the Secretary shall be considered by the court only if such objections have been submitted to the Secretary during the administrative proceedings related to the actions involved.

(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(7) Upon the filing of the record with the court, pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

(d) Except as to causes of action which the court considers of greater importance, any action under this section shall take precedence on the docket over all other causes of action and shall be set for hearing at the earliest practical date and expedited in every way.

SEC. 24. REMEDIES AND PENALTIES.—*(a) At the request of the Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located*

for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act or any regulation or order issued under this Act.

(b) If any person fails to comply with any provision of this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$10,000 for each day of the continuance of such failure. The Secretary, the Secretary of Labor, or the Secretary of the Department in which the Coast Guard is operating, as applicable, may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing.

(c) Any person who knowingly and willfully (1) violates any provision of this Act, or any regulation or order issued under the authority of this Act designed to protect occupational or public health, safety, or the environment or conserve natural resources, (2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act, or (4) reveals any data or information required to be kept confidential by this Act, shall upon conviction, be punished by a fine of not more than \$100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

(d) Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

(e) The remedies and penalties prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this section shall be in addition to any other remedies and penalties afforded by any other law or regulation.

SEC. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION.—(a) (1) Prior to development and production pursuant to an oil and gas lease issued under this Act after the date of enactment of this section, or pursuant to an oil and gas lease issued under this Act and outstanding on the date of enactment of this section, with respect to which development and production has not yet commenced, the lessee shall submit a development and production plan (hereinafter in this section referred to as a “plan”) to the Secretary, for approval pursuant to this section.

(2) A plan shall be accompanied by a statement describing all facilities and operations other than those on the outer Continental Shelf proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development or production of oil or gas from the lease area, including

the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

(3) Except for interpretive data, which, pursuant to regulations prescribed by the Secretary, constitute confidential or privileged information, the Secretary, within ten days after receipt of a plan and statement, shall (A) submit such plan and statement to the Governor of any affected State and to any appropriate Regional Outer Continental Shelf Advisory Board established pursuant to section 19 of this Act, and (B) make such plan and statement available to any other appropriate interstate regional entity, the executive of any affected local government area, and the public.

(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act unless such lease requires that development and production of reserves be carried out in accordance with a plan which complies with the requirements of this section.

(c) A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

(1) the specific work to be performed;

(2) a description of all offshore facilities and operations proposed by the lessee or known by him (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

(3) the environmental safeguards to be implemented on the outer Continental Shelf and how such safeguards are to be implemented;

(4) all safety standards to be met and how such standards are to be met;

(5) an expected rate of development and production and a time schedule for performance; and

(6) such other relevant information as the Secretary may by regulation require.

(d) (1) After review of a plan submitted pursuant to this section in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Secretary shall declare his findings as to whether development and production pursuant to the lease or set of leases (which set includes such lease and other leases which cover adjacent or nearby areas to the area covered by such lease) is a major Federal action.

(2) The Secretary shall at least once, prior to major development in any structure, area, or region of the outer Continental Shelf where there has been no previous development of oil and natural gas, declare development and production pursuant to a lease or set of leases to be a major Federal action.

(3) The Secretary may require lessees on adjacent or nearby leases to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 shall commence.

(e) *If development and production pursuant to a plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, any appropriate Regional Outer Continental Shelf Advisory Board, any appropriate interstate regional entity, and the executive of any affected local government area, for review and comment, and shall make such draft available to the general public.*

(f) *If development and production pursuant to a plan is not found to be a major Federal action, the Governor of any affected State, any appropriate Regional Outer Continental Shelf Advisory Board, and the executive of any affected local government area shall have ninety days from receipt of the plan from the Secretary to submit comments and recommendations. Such comments and recommendations shall be made available to the public upon request. In addition, any interested person may submit comments and recommendations.*

(g) (1) *After reviewing the record of any public hearing held with respect to a plan pursuant to the National Environmental Policy Act of 1969 or the comments and recommendations submitted under subsection (f) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsection (d) of this section, or one hundred and twenty days after the period provided for comment under subsection (f) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the human, marine, or coastal environment, except that any modification requested by the Secretary shall be, to the maximum extent practicable, consistent with the coastal zone management programs of affected States approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), and with any valid exercise of authority by the State involved or any political subdivision thereof. The Secretary shall disapprove a plan only (A) if the lessee fails to demonstrate that he can comply with the requirements of this Act and other applicable Federal law, (B) if the plan is not and cannot be made, to the maximum extent practicable, consistent with the coastal zone management programs of affected States approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), or with any valid exercise of authority by the State involved or any political subdivision thereof, or (C) if because of exceptional geological conditions in the lease area, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, the proposed plan cannot be modified to insure a safe operation. If a plan is disapproved under clause (C) of this paragraph, the lease shall be deemed canceled and the lessee shall be entitled to reimbursement by the United States for all consideration paid for the lease, plus interest thereon from the date of payment to the date of reimbursement, and for all direct expenditures made after the date of the issuance of such lease and in connection with exploration or development pursuant to the lease.*

(2) *The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes*

in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

(h) The Secretary may approve any revision of an approved plan proposed by the operator if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, or is the only means available to avoid substantial economic hardship to the lessee, to the extent such revision is consistent with protection of the marine and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (g) of this section.

(i) Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may, after notice to such owner of such failure and expiration of any reasonable period allowed for corrective action, and after an opportunity for a hearing, be forfeited, canceled, or terminated, subject to the right of judicial review, in accordance with the provisions of section 23(b) of this Act. Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

SEC. 26. OUTER CONTINENTAL SHELF OIL AND GAS INFORMATION PROGRAM.—(a) (1) (A) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this Act shall provide the Secretary access to all data obtained from such activity and shall provide copies of such specific data, and any interpretation of any such data, as the Secretary may request. Such data and interpretation shall be provided in accordance with regulations which the Secretary shall prescribe.

(B) If an interpretation provided pursuant to subparagraph (A) of this paragraph is made in good faith by the lessee or permittee, such lessee or permittee shall not be held responsible for any consequence of the use of or reliance upon such interpretation.

(C) Whenever any data is provided to the Secretary, pursuant to subparagraph (A) of this paragraph—

(i) by a lessee, in the form and manner of processing which is utilized by such lessee in the normal conduct of his business, the Secretary shall pay the reasonable cost of reproducing such data; and

(ii) by a lessee, in such other form and manner of processing as the Secretary may request, or by a permittee, the Secretary shall pay the reasonable cost of processing and reproducing such data, pursuant to such regulations as he may prescribe.

(2) Each Federal agency shall provide the Secretary with any data obtained by such Federal agency conducting exploration pursuant to section 11 of this Act, and any other information which may be necessary or useful to assist him in carrying out the provisions of this Act.

(b)(1) Information⁷⁷ provided to the Secretary pursuant to subsection (a) of this section shall be processed, analyzed, and interpreted by the Secretary for purposes of carrying out his duties under this Act.

(2) As soon as practicable after information provided to the Secretary pursuant to subsection (a) of this section is processed, analyzed, and interpreted, the Secretary shall make available to the affected States a summary of data designed to assist them in planning for the onshore impacts of possible oil and gas development and production. Such summary shall include estimates of (A) the oil and gas reserves in areas leased or to be leased, (B) the size and timing of development if and when oil or gas, or both, is found, (C) the location of pipelines, and (D) the general location and nature of onshore facilities.

(c) The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information. Such regulations shall include a provision that no such information will be transmitted to any affected State or any Regional Advisory Board unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

(d)(1) The Secretary shall transmit to any affected State and any appropriate Regional Advisory Board—

(A) a copy of all relevant actual or proposed programs, plans, reports, environmental impact statements, tract nominations (including negative nominations) and other lease sale information, any similar type of relevant information, and all modifications and revisions thereof and comments thereon, prepared or obtained by the Secretary pursuant to this Act;

(B) any relevant information prepared by the Secretary pursuant to subsection (b) of this section; and

(C) any relevant information received by the Secretary pursuant to subsection (a) of this section, subject to any applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

(2) Notwithstanding any other provision of this section, the Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Secretary shall designate, any privileged information received by the Secretary regarding any activity adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted. Knowledge obtained by such State during such inspection shall be subject to applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

(e) Any provision of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this Act is expressly preempted by the provisions of this section, to the extent that it applies to such information.

(f) If the Secretary finds that any State cannot or does not comply with the regulations issued under subsection (c) of this section, he shall thereafter withhold transmittal of privileged information to such

State until he finds that such State can and will comply with such regulations.

(g) The regulations prescribed pursuant to subsection (c) of this section, and the provisions of subsection 552(b)(9) of title 5, United States Code, shall not apply to any information obtained in the conduct of geological or geophysical explorations by any Federal agency (or any person acting under a service contract with such agency), pursuant to section 11 of this Act.

SEC. 27. FEDERAL PURCHASE AND DISPOSITION OF OIL AND GAS.—(a) (1) Except as may be necessary to comply with the provisions of sections 6 and 7 of this Act, all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease or permit issued or maintained in accordance with this Act, shall, on demand of the Secretary, be paid in oil or gas.

(2) The United States shall have the right to purchase not to exceed 16 $\frac{2}{3}$ per centum by volume of the oil and gas produced pursuant to a lease or permit issued in accordance with this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the wellhead of the oil and gas saved, removed or sold, except that any oil or gas obtained by the United States as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

(3) Title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Administrator of the Federal Energy Administration, for disposal within the Federal Government.

(b) (1) Upon the commencement of production of oil from the outer Continental Shelf pursuant to any lease issued after the date of enactment of this subsection, the Secretary, pursuant to such terms as he determines and in the absence of any provision of law which provides for the mandatory allocation of such oil in amounts and at prices determined by such provision, or regulations issued in accordance with such provision, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the oil (A) obtained by the United States pursuant to such lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

(2) Whenever, after consultation with the Administrator of the Federal Energy Administration, the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, the Secretary may dispose of any oil which is taken as a royalty or net profit share accruing or reserved to the United States pursuant to any lease issued or maintained under this Act, or purchased by the United States pursuant to subsection (a)(2) of this section, by conducting a lottery for the sale of such oil, or may equitably allocate such oil among the competitors for the purchase of such oil, at the regulated price, or if no regulated price applies, at its fair market value. The Secretary shall limit participation in any lottery or allocated sale to assure such access and shall publish notice of such sale, and the terms thereof, at least thirty days in advance of such sale. Such notice shall include

qualifications for participation, the amount of oil to be sold, and any limitation in the amount of oil which any participant may be entitled to purchase.

(3) Whenever a provision of law is in effect which provides for the mandatory allocation of such oil in amounts or at prices determined by such provision, or regulations issued in accordance with such provision, the Secretary may only sell such oil in accordance with such provision of law or regulations.

(c) (1) Except as provided in paragraph (2) of this subsection, upon the commencement of production of gas pursuant to any lease issued after the date of enactment of this subsection, the Secretary, pursuant to such terms as he determines, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the gas (A) obtained by the United States pursuant to a lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a) (2) of this section.

(2) Whenever, after consultation with and advice from the Administrator of the Federal Energy Administration and the Chairman of the Federal Power Commission, the Secretary determines that an emergency shortage of natural gas is threatening to cause severe economic or social dislocation in any region of the United States and that such region can be serviced in practical, feasible, and efficient manner by royalty, net profit share, or purchased gas obtained pursuant to the provisions of this subsection, the Secretary may allocate or conduct a lottery for the sale of such gas, and shall limit the sale of such gas to any person servicing such region, but he shall not sell any such gas for more than its regulated price, or, if no regulated price applies, less than its fair market value. Prior to allocating any gas pursuant to this paragraph, the Secretary shall consult with the Federal Power Commission.

(d) The lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Secretary, and which is not transferred pursuant to subsection (a) (3) of this section, and shall pay to the United States a cash amount equal to the regulated price, or, if no regulated price applies, the fair market value of the oil or gas so obtained. In the event that net profit share oil or gas produced pursuant to the bidding system authorized in subparagraphs (G) and (H) of section 8(a) (1) of this Act is sold back to the lessee or lessees, each party shall be eligible to purchase a pro rata share according to its per centum interest.

(e) As used in this section—

(1) the term "regulated price" means the highest price—

(A) at which Federal oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 and any rule or order issued under such Act;

(B) at which natural gas may be sold to natural-gas companies pursuant to the Natural Gas Act and any rule or order issued under such Act; or

(C) at which either Federal oil or gas may be sold under any other provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil or

gas produced pursuant to a lease or permit issued in accordance with this Act; and

(2) the term "small refiner" means an owner of an existing refinery or refineries, including refineries not in operation, who qualifies as a small business concern under the rules of the Small Business Administration and who is unable to purchase in the open market an adequate supply of crude oil to meet the needs of his existing refinery capacities.

(f) Nothing in this section shall prohibit the right of the United States to purchase any oil or gas produced on the outer Continental Shelf, as provided in section 12(b) of this Act.

SEC. 28. LIMITATIONS ON EXPORT.—(a) Except as provided in subsection (d), any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

(b) Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

(c) The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States.

COASTAL ZONE MANAGEMENT ACT OF 1972

(Public Law 92-583)

* * * * *

DEFINITIONS

SEC. 304. For the purposes of this title—

(a) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches.

The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(b) "Coastal waters" means (1) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (2) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(c) "Coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(d) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(e) "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(f) "Secretary" means the Secretary of Commerce.

(g) "Management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) "Water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 307(f).

(i) "Land use" means activities which are conducted in or on the shorelands within the coastal zone, subject to the requirements outlined in section 307(g).

(j) "*Outer Continental Shelf energy activity*" means *exploration for, or the development or production of, oil and gas resources from the outer Continental Shelf, or the location, construction, expansion or operation of any energy facilities made necessary by such exploration or development.*

(k) "*Energy facilities*" means *new facilities or additions to existing facilities—*

(1) which are or will be directly used in the extraction, conversion, storage, transfer, processing, or transporting of any energy resource; or

(2) which are or will be used primarily for the manufacture, production, or assembly of equipment, machinery, products, or devices which are or will be directly involved in any activity described in paragraph (1) of this subsection and which will serve, impact, or otherwise affect a substantial geographical area or substantial numbers of people.

The term includes, but is not limited to (A) electric generating plants; (B) petroleum refineries and associated facilities; (C) gasification plants; liquefied natural gas storage, transfer, or conversion facilities; and uranium enrichment or nuclear fuel processing facilities; (D) outer Continental Shelf oil and gas exploration, development, and production facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, refining complexes, and any other installation or property that is necessary for such exploration, development, or production; (E) facilities for offshore loading and marine transfer of petroleum; (F) pipelines and transmission facilities; and (G) terminals which are associated with any of the foregoing.

(l) "Public facilities and public services" means any services or facilities which are financed, in whole or in part, by state or local government. Such services and facilities include, but are not limited to, highways, secondary roads, parking, mass transit, water supply, waste collection and treatment, schools and education, hospitals and health care, fire and police protection, recreation and culture, other human services, and facilities related thereto, and such governmental services as are necessary to support any increase in population and development.

(m) "Local government" means any political subdivision of any coastal state if such subdivision has taxing authority or provides any public service which is financed in whole or part by taxes, and such term includes, but is not limited to, any school district, fire district, transportation authority, and any other special purpose district or authority.

(n) "Net adverse impacts" means the consequences of a coastal energy activity which are determined by the Secretary to be economically or ecologically costly to a state's coastal zone when weighed against the benefits of a coastal energy activity which directly offset such costly consequences according to the criteria as determined in accordance with section 308(c) of this title. Such impacts may include, but are not limited to—

(1) rapid and significant population changes or economic development requiring expenditures for public facilities and public services which cannot be financed entirely through its usual and reasonable means of generating state and local revenues, or through availability of Federal funds including those authorized by this title;

(2) unavoidable loss of unique or unusually valuable ecological or recreational resources when such loss cannot be replaced or restored through its usual and reasonable means of generating

state and local revenues, or through availability of Federal funds including those authorized by this title.

(o) "Coastal energy activity" means any of the following activities if it is carried out in, or has a significant effect on, the coastal zone of any coastal state or coastal states—

(1) the exploration, development, production, or transportation of oil and gas resources from the outer Continental Shelf and the location, construction, expansion, or operation of supporting equipment and facilities limited to exploratory rigs and vessels; production platforms; subsea completion systems; marine service and supply bases for rigs, drill ships, and supply vessels; pipelines, pipelaying vessels and pipeline terminals, tanks receiving oil or gas from the outer Continental Shelf for temporary storage; vessel loading docks and terminals used for the transportation of oil or gas from the outer Continental Shelf; and other facilities or equipment required for the removal of the foregoing or made necessary by the foregoing when such other facilities or equipment are determined by the coastal state affected to have technical requirements which would make their location, construction, expansion, or operation in the coastal zone unavoidable;

(2) the location, construction, expansion, or operation of vessel loading docks, terminals, and storage facilities used for the transportation of liquefied natural gas, coal, or oil of conversion or treatment facilities necessarily associated with the processing of liquefied natural gas; or

(3) the location, construction, expansion, or operation of deep-water ports and directly associated facilities, as defined in the Deepwater Port Act (33 U.S.C. 1501-1524).

* * * * *

COASTAL ENERGY ACTIVITY IMPACT PROGRAM

SEC. 308. (a) (1) The Secretary shall make a payment for each fiscal year to each coastal state in an amount which bears to the amount appropriated for that fiscal year pursuant to paragraph (6) of this subsection the same ratio as the number representing the average of the following proportions (computed with regard to such state) bears to 100—

(A) the proportion which the outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal Government in that year bears to the total outer Continental Shelf acreage which is leased by the Federal Government in that year;

(B) the proportion which the number of exploration and development wells adjacent to that state which are drilled in that year on outer Continental Shelf acreage leased by the Federal Government bears to the total number of exploration and development wells drilled in that year on outer Continental Shelf acreage leased by the Federal Government;

(C) the proportion which the volume of oil and natural gas produced in that year from outer Continental Shelf acreage which

is adjacent to such state and which is leased by the Federal Government bears to the total volume of oil and natural gas produced in that year from outer Continental Shelf lands under Federal lease in that year;

(D) the proportion which the volume of oil and natural gas produced from outer Continental Shelf acreage leased by the Federal Government and first landed in such state in that year bears to the total volume of oil and natural gas produced from all outer Continental Shelf acreage leased by the Federal Government and first landed in the United States in that year;

(E) the proportion which the number of individuals residing in such state in that year who are employed directly in outer Continental Shelf energy activities by outer Continental Shelf lessees and their contractors and subcontractors bears to the total number of individuals residing in all coastal states who are employed directly in outer Continental Shelf energy activities in that year by outer Continental Shelf lessees, and their contractors and subcontractors; and

(F) the proportion which the onshore capital investment which is made during that year in such state and which is required to directly support outer Continental Shelf energy activities bears to the total of all such onshore capital investment made in all coastal states during that year.

(2) For purposes of calculating the proportions set forth in paragraph (1) of this subsection, "the outer Continental Shelf lands which are adjacent to such state" shall be the portion of the outer Continental Shelf lying on that state's side of extended seaward boundaries determined as follows: (A) In the absence of seaward lateral boundaries, or any portion thereof, clearly defined or fixed by interstate compacts, agreements, or judicial decree (if entered into, agreed to, or issued before the effective date of this paragraph), the boundaries shall be that portion of the outer Continental Shelf which would lie on that state's side of lateral marine boundaries as determined by the application of the principles of the Convention on the Territorial Sea and the Contiguous Zone. (B) If seaward lateral boundaries have been clearly defined or fixed by interstate compacts, agreements, or judicial decree (if entered into, agreed to, or issued before the effective date of this paragraph), such boundaries shall be extended on the basis of the principles of delimitation used to establish them.

(3) The Secretary shall have the responsibility for the compilation, evaluation, and calculation of all relevant data required to determine the amount of the payments authorized by this subsection and shall, by regulations promulgated in accordance with section 553 of title 5, United States Code, set forth the method by which collection and evaluation of such data shall be made. In compiling and evaluating such data, the Secretary may require the assistance of any relevant Federal or State agency. In calculating the proportions set forth in paragraph (1) of this subsection, payments made for any fiscal year shall be based on data from the immediately preceding fiscal year, and data from the transitional quarter beginning July 1, 1976, and ending September 30, 1976, shall be included in the data from the fiscal year ending June 30, 1976.

(4) *Each coastal state receiving payments under this subsection shall use the moneys for the following purposes and in the following order of priority:*

(A) *The retirement of state and local bonds, if any, which are guaranteed under section 309 of this title which were issued for projects or programs designed to provide revenues which are to be used to provide public services and public facilities which are made necessary by outer Continental Shelf energy activity; except that, if the amount of such payments is insufficient to retire both state and local bonds, priority shall be given to retiring local bonds.*

(B) *The study of, planning for, development of, and the carrying out of projects or programs which are designed to provide new or additional public facilities or public services required as a direct result of outer Continental Shelf energy activity.*

(C) *The reduction or amelioration of any unavoidable loss of unique or unusually valuable ecological or recreational resources resulting from outer Continental Shelf activity.*

(5) *It shall be the responsibility of the Secretary to determine annually if such coastal state has expended or committed funds in accordance with the purposes authorized herein by utilizing procedures pursuant to section 312 of this title. The United States shall be entitled to recover from any coastal state that portion of any payment received by such state under this subsection which—*

(A) *is not expended by such state before the close of the fiscal year immediately following the fiscal year in which the payment was disbursed, or*

(B) *is expended or committed by such state for any purposes other than a purpose set forth in paragraph (4) of this subsection.*

(6) *For purposes of this subsection, there are hereby authorized to be appropriated funds not to exceed \$50,000,000 for the fiscal year ending September 30, 1977; \$50,000,000 for the fiscal year ending September 30, 1978; \$75,000,000 for the fiscal year ending September 30, 1979; \$100,000,000 for the fiscal year ending September 30, 1980; and \$125,000,000 for the fiscal year ending September 30, 1981.*

(7) *It is the intent of Congress that each state receiving payments under this subsection shall, to the maximum extent practicable, allocate all or a portion of such payments to local governments thereof and that such allocation shall be on a basis which is proportional to the extent to which local governments require assistance for purposes as provided in paragraph (4) of this subsection. In addition, any coastal state may, for the purposes of carrying out the provisions of this subsection and with the approval of the Secretary, allocate all or a portion of any grant received under this subsection to (A) any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, (B) any regional agency, or (C) any interstate agency. No provision in this subsection shall relieve any state of the responsibility for insuring that any funds allocated to any local government or other agency shall be applied in furtherance of the purposes of this subsection.*

(b) (1) *The Secretary may make grants to any coastal state if he determines that such state's coastal zone is being, or is likely to be, impacted by the location, construction, expansion, or operation of*

energy facilities in, or which significantly affect its coastal zone. Such grants shall be for the purpose of enabling such coastal state to study and plan for the economic, social, and environmental consequences which are resulting or are likely to result in its coastal zone from such energy facilities. The amount of any such grant may equal up to 80 per centum of the cost of such study or plan, to the extent of available funds.

(2) The Secretary may make grants to any coastal state if he is satisfied, pursuant to regulations and criteria to be promulgated according to subsection (c) of this section, that such state's coastal zone has suffered, or will suffer, net adverse impacts from any coastal energy activity. Such grants shall be used for, and may equal up to 80 per centum of the cost of carrying out projects, programs, or other purposes which are designed to reduce or ameliorate any net adverse impacts resulting from coastal energy activity.

(c) Within one hundred and eighty days after the effective date of this section, the Secretary shall, by regulations promulgated in accordance with section 553 of title 5, United States Code, establish requirements for grant eligibility under subsection (b) of this section. Such regulations shall—

(1) include appropriate criteria for determining the amount of a grant and the general range of studying and planning activities for which grants will be provided under subsection (b) (1) of this section;

(2) specify the means and criteria by which the Secretary shall determine whether a state's coastal zone has, or will suffer, net adverse impacts;

(3) include criteria for calculating the amount of a grant under subsection (b) (2) of this section, which criteria shall include consideration of—

(A) offsetting benefits to the state's coastal zone or a political subdivision thereof, including but not limited to, increased revenues;

(B) the state's overall efforts to reduce or ameliorate net adverse impacts, including but not limited to, the state's effort to insure that persons whose coastal energy activity is directly responsible for net adverse impacts in the state's coastal zone are required, to the maximum extent practicable, to reduce or ameliorate such net adverse impacts;

(C) the state's consideration of alternative sites for the coastal energy activity which would minimize net adverse impacts; and

(D) the availability of Federal funds pursuant to other statutes, regulations, and programs, and under subsection (a) of this section, which may be used in whole or in part to reduce or ameliorate net adverse impacts of coastal energy activity;

In developing regulations under this section, the Secretary shall consult with the appropriate Federal agencies, which upon request, shall assist the Secretary in the formulation of the regulations under this subsection on a nonreimbursable basis; with representatives of appropriate state and local governments; with commercial, industrial, and environmental organizations; with public and private groups; and

with any other appropriate organizations and persons with knowledge or concerns regarding adverse impacts and benefits that may affect the coastal zone.

(d) All funds appropriated to carry out the purposes of subsection (b) of this section shall be deposited in a fund which shall be known as the Coastal Energy Activity Impact Fund. The fund shall be administered and used by the Secretary as a revolving fund for carrying out such purposes. General expenses of administering this section may be charged to the fund. Moneys in the fund may be deposited in interest-bearing accounts or invested in bonds or other obligations which are guaranteed as to principal and interest to the United States.

(e) There are hereby authorized to be appropriated to the Coastal Energy Activity Impact Fund such sums not to exceed \$125,000,000 for the fiscal year ending September 30, 1977, and for each of the next four succeeding fiscal years, as may be necessary, which shall remain available until expended.

(f) It is the intent of Congress that each state receiving any grant under paragraph (1) or (2) of subsection (c) of this section shall, to the maximum extent practicable, allocate all or a portion of such grant to any local government thereof which has suffered or may suffer net adverse impacts resulting from coastal energy activities and such allocation shall be on a basis which is proportional to the extent of such net adverse impact. In addition, any coastal state may, for the purpose of carrying out the provisions of subsection (c) of this section, with the approval of the Secretary, allocate all or a portion of any grant received to (1) any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, (2) any regional agency, or (3) any interstate agency. No provision in subsection (b) of this section shall relieve a state of the responsibility for insuring that any funds so allocated to any local government or any other agency shall be applied in furtherance of the purposes of such subsection.

(g) No coastal state is eligible to receive any payment under subsection (a) of this section, or any grant under subsection (b) of this section unless such state—

(1) is receiving a program development grant under section 305 of this title, or is making satisfactory progress, as determined by the Secretary, toward the development of a coastal zone management program, or has such a program approved pursuant to section 306 of this title; and

(2) has demonstrated to the satisfaction of, and has provided adequate assurances to, the Secretary that the proceeds of any such payment or grant will be used in a manner consistent with the coastal zone management program being developed by it, or with its approved program, consistent with the goals and objectives of this title.

STATE AND LOCAL GOVERNMENT BOND GUARANTEES

Sec. 309. (a) The Secretary is authorized, in accordance with such rules as he shall prescribe, to make commitments to guarantee and to guarantee the payment of interest on and the principal balance of bonds

or other evidences of indebtedness issued by a coastal state or unit of general purpose local government for the purposes specified in subsection (b) of this section.

(b) A bond or other evidence of indebtedness may be guaranteed under this section only if it is issued by a coastal state or unit of general purpose local government for the purpose of obtaining revenues which are to be used to provide public services and public facilities which are made necessary by outer Continental Shelf energy activities.

(c) Bonds or other evidences of indebtedness guaranteed under this section shall be guaranteed on such terms and conditions as the Secretary shall prescribe, except that—

(1) no guarantee shall be made unless the Secretary determines that the issuer of the evidence of indebtedness would not be able to borrow sufficient revenues on reasonable terms and conditions without the guarantee;

(2) the guarantees shall provide for complete amortization of the indebtedness within a period not to exceed thirty years;

(3) the aggregate principal amount of the obligations which may be guaranteed under this section on behalf of a coastal state or a unit of general purpose local government and outstanding at any one time may not exceed \$20,000,000;

(4) the aggregate principal amount of all the obligations which may be guaranteed under this section and outstanding at any one time may not exceed \$200,000,000;

(5) no guarantee shall be made unless the Secretary determines that the bonds or other evidences of indebtedness will—

(A) be issued only to investors approved by or meeting requirements prescribed by the Secretary, or, if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary;

(B) bear interest at a rate satisfactory to the Secretary;

(C) contain or be subject to repayment, maturity, and other provisions satisfactory to the Secretary; and

(D) contain or be subject to provisions with respect to the protection of the security interest of the United States;

(6) the approval of the Secretary of the Treasury shall be required with respect to any guarantee made under this section, except that the Secretary of the Treasury may waive this requirement with respect to the issuing of any such obligation when he determines that such issuing does not have a significant impact on the market for Federal Government and Federal Government-guaranteed securities;

(7) the Secretary determines that there is reasonable assurance that the issuer of the evidence of indebtedness will be able to make the payments of the principal of and interest on such evidence of indebtedness; and

(8) no guarantee shall be made after September 30, 1981.

(d) (1) Prior to the time when the first bond or other evidence of indebtedness is guaranteed under this section, the Secretary shall publish in the Federal Register a list of the proposed terms and conditions under which bonds and other evidences of indebtedness will be guaranteed under this section. For at least thirty days following such pub-

lication, the Secretary shall receive, and give consideration to, comments from the public concerning such terms and conditions. Following this period, the Secretary shall publish in the Federal Register a final list of the conditions under which bonds and other evidences of indebtedness will be guaranteed under this section. The initial guarantee made under this section may not be conducted until thirty days after the final list of terms and conditions is published.

(2) Prior to making any amendment to such final list of terms and conditions, the Secretary shall publish such amendment in the Federal Register and receive, and give consideration to, comments from the public for at least thirty days following such publication. Following this period, the Secretary shall publish in the Federal Register the final form of the amendment, and such amendment shall not become effective until thirty days after this publication.

(e) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section with respect to principal, interest, and any redemption premiums. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation.

(f) The Secretary shall prescribe and collect a fee in connection with guarantees made under this section. This fee may not exceed the amount which the Secretary estimates to be necessary to cover the administrative costs of carrying out this section. Fees collected under this subsection shall be deposited in the revolving fund established under subsection (i).

(g) With respect to any obligation guaranteed under this section, the interest payment paid on such obligation and received by the purchaser thereof (or his successor in interest) shall be included in gross income from the purpose of chapter 1 of the Internal Revenue Code of 1954.

(h) (1) Payments required to be made as a result of any guarantee made under this section shall be made by the Secretary from funds which may be appropriated to the revolving fund established by subsection (i) or from funds obtained from the Secretary of the Treasury and deposited in such revolving fund pursuant to subsection (i) (2).

(2) If there is a default by a coastal state or unit of general purpose local government in any payment of principal or interest due under a bond or other evidence of indebtedness guaranteed by the Secretary under this section, any holder of such bond or other evidence of indebtedness may demand payment by the Secretary of the unpaid interest on and the unpaid principal of such obligation as they become due. The Secretary, after investigating the facts presented by the holder, shall pay to the holder the amount which is due him, unless the Secretary finds that there was no default by the coastal state or unit of general purpose local government or that such default has been remedied. If the Secretary makes a payment under this paragraph, the United States shall have a right of reimbursement against the coastal state or unit of general purpose local government for which the payment was made for the amount of such payment plus interest at the prevailing current rate as determined by

the Secretary. If any revenue becomes due to such coastal state or unit of general purpose local government under section 308(a) of this title, the Secretary shall, in lieu of paying such coastal state or unit of general purpose local government such revenue, deposit such revenue in the revolving fund established under subsection (i) until the right of reimbursement has been satisfied.

(3) The Attorney General shall, upon request of the Secretary, take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this section. Any sum recovered pursuant to this paragraph shall be paid into the revolving fund established by subsection (i).

(i) (1) The Secretary shall establish a revolving fund to provide for the timely payment of any liability incurred as a result of guarantees made under this section, for the payment of costs of administering this section, and for the payment of obligations issued to the Secretary of the Treasury under paragraph (2) of this subsection. This revolving fund shall be comprised of—

- (A) receipts from fees collected under this section;
- (B) recoveries under security, subrogation, and other rights;
- (C) reimbursements, interest income, and any other receipts obtained in connection with guarantees made under this section;
- (D) proceeds of the obligations issued to the Secretary of the Treasury pursuant to paragraph (2) of this subsection; and
- (E) such sums as may be appropriated to carry out the provisions of this section.

Funds in the revolving fund not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States or guaranteed thereby or in obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds.

(2) The Secretary may, for the purpose of carrying out the functions of this section, issue obligations to the Secretary of the Treasury only to such extent or in such amounts as may be provided in appropriation Acts. The obligations issued under this paragraph shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury shall purchase any obligation so issued, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any security issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under that Act are extended to include purchases of the obligations hereunder. Proceeds obtained by the Secretary from the issuance of obligations under this paragraph shall be deposited in the revolving fund established in paragraph (1).

(3) There are authorized to be appropriated to the revolving fund such sums as may be necessary to carry out the provisions of this section.

(4) Funds may be obligated for purposes stated in subsection (i) only to the extent provided in appropriations Acts.

(j) No bond or other evidence of indebtedness shall be guaranteed under this section unless the issuer of the evidence of indebtedness and the person holding the note with respect to such evidence of indebted-

ness permit the General Accounting Office to audit, under rules prescribed by the Comptroller General of the United States, all financial transactions of such issuer and holder which relate to such evidence of indebtedness. The representatives of the General Accounting Office shall have access to all books, accounts, reports, files, and other records of such issuer and such holder insofar as any such record pertains to financial transactions relating to the evidence of indebtedness guaranteed under this section.

(k) For purposes of this section, the term "unit of general purpose local government" shall mean any city, county, town, township, parish, village, or other general purpose political subdivision of a coastal state, if such general purpose political subdivision possesses taxing powers and has responsibility for providing public facilities or public services to the community, as determined by the Secretary.

(l) Notwithstanding any other provision of this section, the authority to make guarantees or commitments to guarantee under this section shall be effective only to the extent provided in appropriations Acts enacted after the date of enactment of this section.

PUBLIC HEARINGS

Sec. [308] 310. All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

REVIEW OF PERFORMANCE

Sec. [309] 311. (a) The Secretary shall conduct a continuing review of the management programs of the coastal states and of the performance of each state.

(b) The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

RECORDS

Sec. [310] 312. (a) Each recipient of a grant under this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, docu-

ments, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this title.

ADVISORY COMMITTEE

SEC. [311] 313. (a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including traveltime, may receive compensation at rates not exceeding \$100 per diem; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently.

ESTUARINE SANCTUARIES

SEC. [312] 314. The Secretary, in accordance with rules and regulations promulgated by him, is authorized to make available to a coastal state grants of up to 50 per centum of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of the natural and human processes occurring within the estuaries of the coastal zone. The Federal share of the cost for each such sanctuary shall not exceed \$2,000,000. No Federal funds received pursuant to section 305 or section 306 shall be used for the purpose of this section.

ANNUAL REPORT

SEC. [313] 316. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than November 1 of each year a report on the administration of this title for the preceding fiscal year. The report shall include but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved or with respect to which grants have been terminated under this title, and a statement of the reasons for such action; (5) a listing of all activities and projects

which, pursuant to the provisions of subsection (c) or subsection (d) of section 307, are not consistent with an applicable approved state management program; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (8) a summary of outstanding problems arising in the administration of this title in order of priority; and (9) such other information as may be appropriate.

(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

RULES AND REGULATIONS

SEC. 314. The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. [315].317. (a) There are authorized to be appropriated—

(1) the sum of \$9,000,000 for the fiscal year ending June 30, 1973, and for each of the fiscal years 1974 through 1977 for grants under section 305, to remain available until expended;

(2) such sums, not to exceed \$30,000,000, for the fiscal year ending June 30, 1974, and for each of the fiscal years 1975 through 1977, as may be necessary, for grants under section 306 to remain available until expended; and

(3) such sums, not to exceed \$6,000,000 for the fiscal year ending June 30, 1974, as may be necessary, for grants under section 312, to remain available until expended.

(b) There are also authorized to be appropriated such sums, not to exceed \$3,000,000, for fiscal year 1973 and for each of the four succeeding fiscal years, as may be necessary for administrative expenses incident to the administration of this title.

XIII. ADDITIONAL VIEWS ON H.R. 6218

During consideration of H.R. 6218, I offered a number of amendments which I felt were necessary in order to achieve a workable act. I was pleased that the Committee accepted some of these amendments, but feel it worthy of these additional views to call to the attention of the House various areas of this legislation which cause me concern.

I was particularly pleased to receive a copy of the report from the Library of Congress entitled "Effects of Offshore Oil and Natural Gas Development on the Coastal Zone", which the Chairman had requested be prepared for our Committee. The findings which appear at the beginning of the report offer an objective base of support for most all of the amendments which I sponsored and supported. I do feel that the rejection by the Committee of several of my points was due to the absence of any solid findings in many areas of concern and, to this end, the emergence of this report with these findings should offer a platform on which to build necessary changes in the final form of this bill.

In a letter to the Chairman, dated February 18, 1976, I outlined eleven major concerns I had with the bill. During the markup of the legislation, I raised these concerns in the form of amendments and find it necessary to raise the deficient points still found in the bill.

The purposes as set forth in H.R. 6218 refer to making oil and natural gas resources available to meet the Nation's energy needs as rapidly as possible. This language, however, is followed by a maze of legislative language which, if enacted as is, will cause significant and serious delays in the overall effort to create greater domestic energy security. Rather than detail these possible delay mechanisms here, I have attached a summary of new OCS regulations required or authorized under H.R. 6218, if passed, which would give weight to my contention that significant delays would be caused.

Another cause for concern involves the requirement that industry makes available its confidential or interpretive data not only to the Federal government, but also to various State parties. Throughout our travels this past year, we have received testimony from scores of individuals and professionals in the field of energy development and production, public officials and interested parties on the subject of providing adequate knowledge to those areas or locals which will experience any impact from OCS energy activities. At no time during our hearings was the case made for a necessity for access to the private, confidential interpretive data owned by the various industries involved in OCS activities.

Recalling our hearings and re-reading these volumes of testimony indicate a want by our state and local governments for any information which might help them anticipate or plan for any impact or change in economic, or social environment. I support this concept wholly. I must oppose, however, the release of any interpretive data which can

serve no real use to these parties other than an avenue for mischief, as these data are extremely valuable and confidential. It goes without saying that from past experience with information leaks here in Washington, it would be nearly impossible to protect this information with the numbers of individuals who would have access to it. There is a limit as to how far we as a government can go in appearing to provide the air of openness in our operations, and certainly this limit is overstepped by forcing the private sector to provide, to all, the very lifeline of their operations and competitive edge in dealing with other industries.

I believe we should also reevaluate our position with regard to the issuance of a lease for only a five year period. It is felt that to limit a lease agreement to five years with the option of renewal given to the Secretary would deter action on leases by the companies in areas of high risk or areas where the probability of lengthy development exists, as is the case in many frontier areas. As an example, to drill at 2,000 feet where unique equipment and technology is required may, out of necessity, take longer than five years. Even though proponents of the five year leases point to the probability of the Secretary acting to allow an extension of the time to produce that lease, an initial decision to invest in the project may not be made due to the uncertainty of whether an extension will actually be made and, if so, whether that decision will be challenged and overruled. The problem becomes further complicated when we take into account that investors from smaller companies may not be willing to invest the capital required to produce in high risk areas without the prior assurance that completion will be permitted. Considering the fact that any lessee must adhere to any provision of the OCS act, there seems to be no reason with foundation for restricting leases to five year periods and chance the possibility that this may prove counter productive.

Another matter of particular concern is that the bill would make the provisions of the Act retroactive to existing leases on the OCS. Briefly, I feel that this would cause a breach of contract and an undue burden on the lessee who acquired the lease under a different set of guidelines. When considering this section, several Members indicated that the retroactivity was necessary in order to assure protection of the environment. To quote from the Library of Congress study, "Most oil pollution in the oceans comes from vessels, especially tankers, and from waste oil in municipal and industrial effluents. A five-percent reduction in oil pollution from either of these sources would have a more positive impact on the marine environment than elimination of all offshore production. . .". "Based on experience to date and the probability of spills, offshore OCS production will be less damaging to the environment than importing a like amount of petroleum." The section of the study entitled "OCS Operations are Environmentally Sound" best says it all and eliminates any need for retroactivity, as any operation on the OCS currently meets rugged tests and stringent environmental requirements, according to the study.

Action by the Committee also included a provision requiring that any new leases let in a year would have to be made using alternative lease systems in 10% of the total lease sales. Again referring to testimony received in hearings, this provision would cause a possible use

of new untried bidding schemes which might not be in the best interest of the nation in terms of receiving a fair value for the resources and obtaining the maximum yield from any reserves discovered. It seems highly unwarranted to mandate a percentage use of new systems which have yet to undergo any feasibility studies or working tests. The Secretary of the Interior should be encouraged to perform a testing program of any new leasing schemes before locking in a system which might fail to prove successful.

I feel we face vital decisions to be made on this matter which is uppermost in the minds of our own citizens, not to mention the minds of world leaders and economic strategists. Our deliberation must be made in a manner in which we recognize the priorities of each issue and lend our support to those matters of highest priority to this country.

In this light, we must look to the purposes of our legislative work and assure that our means achieve the desired end result. The job of this Committee was to formulate, if necessary, new guidelines for Federal regulation of the resources on the OCS. The job of this Committee was to assure that adequate sources of energy are available to assure America's working, living, and military security. And, the job of this Committee was to assure those parties responsible for making this Nation the world center for energy technology and development, and those parties responsible for providing this Nation with the greatest and cheapest supplies of energy a fair and workable long-range alternative, if any, to the present federal regulations governing their daily operation. In doing this, we must keep uppermost in mind that the short-term political opinions of today must not dictate our actions to create a long-term energy posture.

In conclusion, I again will reflect on the comprehensive hearings conducted by the Committee. Considering the number of experts who appeared before us around the country to give us the benefit of their knowledge on OCS matters, I feel confident that we are well equipped with the knowledge and technology to move forward in an effort to expeditiously recover those resources which represent the lifeline of our Country. This legislative act, H.R. 6219, should complement, rather than hamper, that process.

Sincerely,

JOHN BREAU.

NEW OCS REGULATIONS REQUIRED OR AUTHORIZED UNDER H.R. 6218

(As ordered reported)

Sec. 5—Administration of Leasing of the Outer Continental Shelf

New regulations governing:

1. Suspension or temporary prohibition of lease activities at the request of the lessee or because of a threat of serious harm, etc.
2. Cancellation of any lease or permit because of threat of serious harm or damage, etc.
3. The assignment or relinquishment of leases.
4. Sale of royalty, net profit share or purchased oil or gas accruing or reserved to the U.S. under Sec. 8.
5. The use of different bidding systems under Sec. 8.

6. The preparation and submission of annual reports to the Congress under Sec. 15.

7. The development and enforcement of safety regulations under sections 21 and 22.

8. The preparation and implementation of leasing and development programs under Sec. 18.

9. Procedures for citizen suits under Sec. 23.

10. Establishment of and procedures for Regional OCS Advisory Boards under Sec. 19.

11. Unitization, pooling and drilling agreements.

12. Subsurface storage of oil and gas.

13. Drilling or easements necessary for exploration, development and production.

14. Prompt and efficient exploration and development of a lease area.

Sec. 8 (Sec. 205 of the Bill)—Revision of Bidding and Lease Administration

New regulations governing:

1. Calculation of net profits under some of the alternative bidding systems.

2. Return of bids, submitted under two of the "working interest" bidding alternatives, which are less than the average price per share of all accepted bids.

3. Cancellation of lease sales if the total amount offered for all shares under the two "working interest" options does not represent a fair return to the Government.

4. Standards and procedures for the formation of a joint working group in areas leased under the "working interest" options.

5. Orders permitting the Secretary to require increased production to deal with emergency shortages.

Sec. 11 (Sec. 207 of the Bill)—OCS Oil and Gas Exploration

New regulations governing:

1. Details of exploration plans required of individual lessees.

2. General statement of development and production intentions, which is to accompany the exploration plan.

3. Permits to drill a well under an exploration plan.

Sec. 18—OCS Leasing Program

New regulations governing procedures for:

1. Receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing.

2. Public notice of and participation in development of the leasing program.

3. Review of the leasing program by State and local governments which may be impacted by the proposed leasing.

4. Periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the Outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities.

5. Coordination of the leasing program with the management program being developed by any State under the CZM Act.

6. Maintaining the confidentiality of all proprietary data or information submitted.

Sec. 20—Baseline and Monitoring Studies

New regulations governing:

1. Procedures (by the Secretary of Commerce) for studies mandated by Sec. 20.

Sec. 21—Safety Regulations

New regulations governing:

1. Safety regulations to apply to the construction and operation of any fixed structure and artificial island. (To be developed by the Secretary of the Interior, the Administrator of EPA, the Secretary of Commerce, the Secretary of the Army, the Secretary of the Department in which the Coast Guard is operating and the Secretary of Labor.)

2. Safety regulations to apply to OCS operations.

3. Interim regulations (by the Secretary of Labor) pursuant to OSHA.

(The Secretary is to compile, and revise and update annually, all safety and other OCS regulations promulgated by any agency or department of the Federal government.)

Sec. 22—Enforcement

New regulations relating to:

1. Physical observation, at least twice yearly, of all OCS installations, fixed or mobile.

2. The testing of all safety equipment.

3. Periodic inspection, without advance notice, to assure compliance with occupational and public health, safety or environmental protection regulations.

Sec. 23—Citizen Suits, etc.

New regulations relating to:

1. The procedure for filing citizen suits against federal officials under subsection (a) (1) (B).

Sec. 25—Oil and Gas Development and Production

New regulations relating to:

1. Definition of confidential or privileged information, included in a development and production plan, which the Secretary need not supply to governors and OCS boards.

2. Details of information to be included in a development and production plan.

Sec. 26—OCS Oil and Gas Information Program

New regulations relating to:

1. Information, data and interpretations which lessees and permittees must make available to the Secretary.

2. Maintenance of the confidentiality of privileged information received by the Secretary.

Title III—Offshore Oil Spill Pollution Fund

New regulations relating to:

1. The fair and expeditious settlement of claims.

2. "Such rules and regulations as may be necessary to carry out the purposes of this title."

3. The filing, processing, settlement and adjudication of cleanup costs and damages.

4. The filing of supporting documents when claims are made.

5. Records to be kept and information to be supplied by lessees to the Secretary.

Title V—Amendments to the CZM Act

New regulations relating to:

1. Requirements for states' grant eligibility.

2. Terms and conditions under which state bonds or other indebtedness shall be guaranteed.

XIV. ADDITIONAL VIEWS ON H.R. 6218

The legislation the Committee has reported to the full House reflects this nation's recognition that the development of our offshore energy resources must be accomplished in as responsible and as efficient a manner as possible.

It became apparent during the hundreds of hours of testimony before the Committee that these objectives can best be guaranteed through a framework of true competition in the oil and gas industry.

As an October 1975 report by the FTC Bureau of Competition and Bureau of Economics stated, "Effective competition is central to achieving the broad objectives of Federal leasing policy. Without effective competition in the market for oil and gas, resource development is unlikely to be efficient. And without effective competition in the market for oil and gas leases, the receipt of fair market value for the leases cannot be assured."

Along with its Constitutional authority to regulate the disposal of Federal property, Congress also has the responsibility to insure that such disposal does not violate Federal law, including, in this case, the antitrust laws.

We commend the Committee for incorporating several provisions into H.R. 6218, which will serve to promote competition throughout the leasing process. However, in one instance the Committee failed to recognize the importance of providing the Attorney General and the Federal Trade Commission with sufficient opportunity to determine whether proposed leases and lease extensions are inconsistent with the antitrust laws.

Section 205(b), adding a new Subsection (c) to Section 8 of the OCS Lands Act, establishes a 30-day period, during which the Secretary of Interior must notify the Attorney General and FTC of all lease sales and extensions. While this is a vital provision, it does not provide any additional procedures by which the agencies entrusted with enforcement of the antitrust laws—FTC and Justice—may take prompt action necessary to prevent violation of those laws.

A provision deleted in Committee would have established such an alternative mechanism. Language removed from the working draft of H.R. 6218 would have allowed the Attorney General and FTS to require a hearing by the Secretary if either agency believed that a particular lease would present a barrier to competition or increase concentration of energy resources or markets. For instance, a hearing might have been necessitated by the existence or likelihood of a regional monopoly or by a certain joint venture—particularly if it involved major oil companies.

Twice before in the 94th Congress, the House supported provisions to insure competitive leasing for Federal energy resources by involving the Attorney General in the leasing process. An amendment to delete this particular antitrust language from the Coal Leasing

Amendments, H.R. 6721, was rejected by the House by voice vote. More recently, the House accepted the Conference version of the Elk Hills bill, H.R. 49, which not only provided for a review of certain Interior actions by the Attorney General, but also gave him the authority to stop those actions which are inconsistent with the anti-trust laws.

Inclusion of similar language in H.R. 6218 is essential to permit the Attorney General and FTC to take effective action within the established leasing process to prevent anticompetitive situations from occurring or continuing. This would neither pose an unreasonable burden to any of these agencies, nor slow the development of our Outer Continental Shelf resources. Indeed, it makes sense to foster industry competition from the beginning of the leasing process to insure efficient OCS development and a fair return to the public for its resources.

CHRISTOPHER J. DODD.
GERRY E. STUDDS.
GEORGE MILLER.
JOSHUA EILBERG.
MORRIS K. UDALL.
PATSY T. MINK.
WILLIAM J. HUGHES.

XV. SUPPLEMENTAL VIEWS ON LEASING OPTIONS

The Committee considered a variety of leasing systems designed to reduce the Department of Interior's reliance on the front-end bonus bid in leasing OCS territories. These alternative leasing methods appear as leasing options in Sec. 205, subsections (a)(1)(B) through (II). After considerable debate, the Committee agreed to require the Secretary to utilize such alternative systems in only 10 percent of all lease sales occurring in each year for the five years subsequent to enactment of this bill.

We believe this figure of 10 percent is unreasonably and unnecessarily low given strong evidence of the problems with the cash bonus system. We believe that a greater use of alternative systems would not only generate substantially greater revenues to the Federal government from Federal OCS leases sales, but also would enhance the possibilities of smaller companies competing for leases.

There has been a substantial amount of testimony from such distinguished and expert witnesses as Governor Brenden Byrne of New Jersey, Kenneth Cory, California State Controller and Chairman of the State Lands Commission, and Mr. E. J. Langhettee, Jr., Vice Chairman, Louisiana Land and Exploration Company, both before the Ad Hoc Committee and the Interior Department, reflecting the view that the front-end bonus bid method—for a variety of reasons—is not the best available system for OCS leasing.

By requiring a large payment of money, at the outset, the bonus bid has effectively precluded smaller companies from entering the OCS leasing process. Studies by both the Federal Trade Commission and the General Accounting Office have shown that the use of the front-end bonus bid discourages competition. While the legislation also would prohibit anti-competitive joint bidding between major companies, unless the use of the front-end bonus is restricted, the ability of smaller companies to participate in OCS activities will remain negligible.

Moreover, commitment of such large amounts of capital prior to development of a lease senselessly ties up money the lessee ought to have available for speedy exploration of a lease.

Importantly, a major argument raised in opposition to requiring the Secretary to utilize a greater percentage of alternative bidding systems was the allegedly "experimental" nature of methods other than the front-end bonus. But as we pointed out during mark-up and at hearings, these alternatives are considered "experimental" *only* because the Secretary has, for the most part, chosen not to use them in Federal OCS lease sales—even though he has had the discretionary authority to do so.

Coastal states in the business of producing offshore reserves have been using many of the proposed alternative leasing methods for many years with enormous success, as have most foreign producing nations.

Significantly, the rate of return to the states and foreign governments under these methods has been far superior to that received by the U.S. Treasury.

For example, California has received about 48 percent of total gross revenues from production under so-called "experimental" lease terms, as compared to the 16 $\frac{2}{3}$ percent the Federal government will realize from all but three of the Federal OCS tracts leased off Southern California last December. In the East Wilmington Field, off Long Beach, California, the City of Long Beach, as trustee for the state, has received a 94 percent net profit share of all production. In Indonesia, under similar production sharing agreements, the Indonesian government has received up to 95 percent of all net profits.

There clearly is no reason why the U.S. government cannot do as well for its people as foreign governments and U.S. states have done for theirs when leasing oil and gas properties. In each of these cases, the lessees are the same oil companies which we have been told would refuse to bid for leases under any methods other than the front-end bonus. The record, however, both in the United States and abroad, where these companies have been actively engaged in offshore drilling, belies these claims.

On these considerations, faced with continuing reluctance by the Executive Branch to use alternative procedures, we believe there is ample reason to direct the Secretary to utilize alternative methods in more than 10 percent of the lease offerings. We emphasize this means all alternative methods—only one of which, the Phillips Plan, is wholly experimental. Even a greater than 10 percent mandate on the use of alternative methods would not compel the Secretary to use one particular alternative leasing procedure over another.

While the language of the bill does not preclude the Secretary from exceeding the 10 percent requirement, we believe that the Congress should not give the Secretary continued discretion to use cash bonus bidding in the vast majority of lease sales. The Secretary should be required to utilize other tried and proven methods which will generate greater revenues to the public and greater competition among potential lessees.

GERRY STUDDS.
 GEORGE MILLER.
 PATSY T. MINK.
 MORRIS K. UDALL.
 JOSHUA EILBERG.
 CHRISTOPHER J. DODD.
 LES AU COIN.
 WILLIAM J. HUGHES.

XVI. ADDITIONAL VIEWS

As the sole member of the Select Committee on the Outer Continental Shelf from a mid-western state, I am especially interested in seeing that the petroleum and gas resources lying off the nation's coasts are developed in such a way as to maximize benefit to all areas of the nation. I am pleased to say that the Committee's work product has been fashioned in such a way as to insure that OCS development will benefit the entire nation in an equitable manner.

It is important to note that under the legislation reported by the Committee the term "affected states" includes any state able to demonstrate impact due to OCS exploration or development, and not merely those states immediately contiguous to the shelf. Thus, states able to show impact will be insured of the right to review, comment on, and participate in, along with their sister coastal states, decisions affecting activities on the OCS.

Additionally, and with direct relevance to my own state of Illinois, the term "coastal state" includes those states lying off the Great Lakes. Aside from being able to review, comment on, and participate in OCS related decision making, such states will be eligible to receive funds under Title IV of HR 6218, which readopted amendments to the Coastal Zone Management Act.

Such funds are made available not only for OCS related impacts, but for impacts from the siting of any energy facility in a coastal zone of a coastal state, such as the Chicago metropolitan area in Illinois.

It is my feeling that in approving the above provisions the Committee has taken a realistic and fair approach to insuring equitable development of our coastal resources for all areas of the United States. Thus, I strongly encourage my colleagues of the Senate and House to insure that such provisions are included in the final form of Outer Continental Shelf legislation emerging from the 94th Congress.

MARTIN A. RUSSO.

XVII. MINORITY VIEWS

1. SUMMARY

One year ago, almost to the day, the House passed H. Res. 242, creating this ad hoc Select Committee. We were given a mandate "to consider and report to the House on the bill H.R. 6218, a bill to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes".

H.R. 6218, as reported, lists the following among its first three purposes:

- the establishment of policies and procedures to achieve national economic and energy policy goals and reduce dependence on foreign energy sources;

- the development of OCS oil and gas to meet the Nation's energy needs as rapidly as possible, taking into concern the environment, a fair return to the public, and free enterprise competition; and

- the development of new and improved technology.

After 18 days of hearings in 13 different cities, the testimony of over 300 witnesses, 17 mark-up sessions, and the consideration of nearly 200 amendments, we come to the point of having to decide if the Committee bill accomplishes these purposes and fulfills the mandate of the House.

We must regretfully conclude that the Committee bill imperfectly carries out these tasks.

Instead of achieving national energy goals and self-sufficiency, the procedures in the Committee bill would create a bureaucratic nightmare and frustrate the very purposes they were supposed to fulfill.

Every day that we meet our Nation's energy needs from foreign sources, every day that we delay the location and production of our own offshore resources, poses an unnecessary risk to our environment and keeps us under the threat of high prices and economic blackmail from the OPEC countries. The administrative delays built into the Committee bill must be eliminated, if it is to serve both our energy and our environmental needs.

Indeed such delays are far more dangerous to our achievement than OCS activities. A study of the "Effects of Offshore Oil and Natural Gas Development on the Coastal Zone", prepared by the Library of Congress for the use of the Committee concludes:

Based on experience to date and the probability of spills, offshore OCS production will be less damaging to the environment than importing a like amount of petroleum.

The Committee Report states that the Committee agrees with this conclusion.

The study also finds that even a five percent reduction in oil pollution from tankers and onshore sources would have a greater positive impact on the marine environment than an elimination of all offshore production.

We strongly support efforts to conserve energy. However, since alternative sources of energy will not be commercially practical for years to come a healthy economy remains dependent on supplies of oil and gas. In the near term we will continue to need more petroleum than we can produce domestically onshore. It is both environmentally safer and in the National interest to make up the difference through prompt OCS development, rather than to delay and accept the risks of continued dependence upon imports.

Instead of protecting the environment, encouraging the development of new and improved technology, assuring a fair return to the public, and maintenance of competition, many provisions of the Committee bill mitigate against accomplishing these aims.

Also, to the extent that there is still some unavoidable risk from OCS production, there are many problems with the Offshore Oil Spill Pollution Fund title of this bill which limit its effectiveness as a means to insure prompt payment of just clean-up and damage claims and to fairly apportion the liability for payment of such claims among the various parties involved.

We have little doubt that the Outer Continental Shelf Lands Act (OCSLA) could stand revision. Over twenty years have passed since its enactment, without significant amendment and with very little oversight by the Congress. The Committee bill does make several worthwhile changes, such as improving the relationship between state and Federal governments. The language of the Act is modernized to give explicit jurisdiction over floating structures actually engaged in drilling, development or production on the OCS. The automatic adoption as Federal law of changes in applicable State law is also an improvement. Individual Members will offer amendments on the Floor to complete the mandate of the House and hopefully turn this bill into a rational vehicle for the efficient management of OCS resources, with due regard for the protection of the environment and for the needs of States which will be affected by OCS activities.

2. A POSITIVE APPROACH

During the past year, the Minority Members of the Ad Hoc Select Committee have worked hard to develop a progressive bill. We developed a one hundred twenty-one page amendment in the Nature of a Substitute to H.R. 6218. Although our substitute was not adopted, its influence on the form of H.R. 6218 has been significant. In some sections of title I of the bill, for instance, Minority language was adopted in toto and incorporated into various Committee Prints. Throughout the bill numerous Minority amendments were accepted by the Select Committee. An expensive, unworkable and unproductive section which would have required the already overburden American taxpayer to finance the risky business of oil and gas exploration was deleted. Dur-

ing the debate on this subject, it became evident that, rather than hurting the large oil companies, Federal exploration would eliminate the risks of business and leave them free to reap profits in even larger proportions. We expect that efforts will be made on the Floor to reinstate this multi-billion dollar subsidy. We trust that the House will follow the Select Committee's lead and resoundingly reject this pernicious concept and do so in large enough numbers to ensure its defeat in conference with the other body.

The continued effectiveness of the National Environmental Policy Act in analyzing the possible environmental impacts of OCS and related development was assured through the adoption of a Minority suggestion. Section 21 of Committee Print No. 2 was deleted. That section would have imposed a single definition of the contents which would have been required in all environmental impact statements with reference to oil and gas development on the OCS. We pointed out that this was opposed by the Council on Environmental Quality and the environmental community as being restrictive and too inflexible. The Select Committee agreed that those designing environmental impact statements should continue to be free to make the study fit the particular situation in a particular lease area.

Perhaps the most important addition to H.R. 6218 made on the initiative of the Minority is the inclusion of Section 26, the Outer Continental Shelf Oil and Gas Information Program. At the time of the introduction of the Minority amendment, H.R. 6218 only contained one paragraph regarding information flow to the States. Our amendment sets forth in great detail both the scope of information to be made available and the way it will be passed along. Under the amendment, States will, for the first time, receive all the information they need to effectively carry out their constitutional police power functions. No longer will they be frustrated in their efforts to comment on environmental analyses due to lack of facts upon which to base an opinion. This opening up of the information flow and the general procedures of the Department of the Interior will, we hope, lead to the reestablishment of public confidence in that Department and less need for resort to law suits on the part of States.

The responsible and productive changes in H.R. 6218 mentioned above indicate the approach taken by the Minority during the course of the bill's hearings and markup. We have done all within our power to insure that the Select Committee moved ahead purposefully with the ultimate end of producing a bill capable of guiding this nation to a position of greater energy security and environmental integrity. The work product of the Select Committee falls short of the goal we set for ourselves. Therefore, we look eagerly ahead to action by the House of Representatives which will correct the bill's present imperfections.

Toward that end, we will offer on the Floor of the House an amendment redrafting Title II of the bill. This will be designed within a coherent framework to reflect the results of our studies of the issues involved, as well as to incorporate the best of the new ideas presented during mark-up. The amendment will be drafted to enable our country to get the benefits of OCS oil and gas resources in a practical and expeditious manner, while reflecting our deep and very personal commitment to the protection of the environment and the rights of those

living in coastal areas. In addition to the substitute for Title II, we will offer individual amendments to improve Title III with the same thoughts in mind.

3. AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

Our specific objections to Title II of the Committee bill are detailed below. These objections will be remedied in the substitute for Title II which we will offer on the Floor.

OMB OR CONGRESS? A BUREAUCRATIC NIGHTMARE

Unfortunately, the reported bill is rife with ambiguities, self-contradictions and overlapping jurisdictions. Chief among these is the complete shambles in which it would leave the regulation of safety on the OCS. Several examples follow:

The Department of the Interior has sole authority for environmental protection in the current OCSLA. The Committee bill retains this sole authority, but also adds a separate provision giving shared authority to Interior and the Environmental Protection Agency, or Interior and the Department of Commerce (National Oceanic and Atmospheric Administration), or all three.

The Coast Guard, in the current OCSLA, has sole authority over lights, markings, and other warning devices for the protection of navigation. The Department of the Army (Corps of Engineers) has sole authority to prevent obstruction to navigation. The Committee bill leaves these provisions intact, but adds a new one giving shared authority to Interior and the Coast Guard, or Interior and Army, or all three.

Under the current OCSLA, the Coast Guard regulates "safety equipment and other matters relating to the promotion of safety of life and property." DOI also has some overall concern in this area under its broad mandate to prescribe regulations relating to leasing of the OCS. Whenever neither agency acts to protect occupational safety and health on the OCS, OSHA is required to do so under its own legislation, but its authority ends when the Coast Guard or DOI steps in. Without changing these independent grants of jurisdiction, the Committee bill also requires joint regulation by Interior and the Coast Guard, or Interior and the Department of Labor (OSHA), or all three.

Under section 22 of the Committee bill, DOI and the Coast Guard enforce safety regulations, even if promulgated by another agency. Also, DOI and OSHA enforce occupational and public health regulations, even though the Coast Guard has the power to do so under OCSLA section 4(e) which remains in effect.

Under current provisions of law, the Coast Guard is required to investigate deaths and serious injuries. Section 22(d)(2) of the Committee bill requires OSHA to investigate, even if Coast Guard regulations are involved, and despite the fact that the Coast Guard may be conducting the same investigation.

The Department of the Army is omitted from the list of those which may impose fines for non-compliance with its regulations and which have access to the courts for remedies to enforce such regulations.

Indeed each of the three agencies (Interior, Coast Guard, and Labor) can use administrative procedures and the courts to enforce any regulation or order under the OCSLA, not just its own.

The inevitable result of this confusion is that Congress will once again turn over its Constitutional powers to OMB, and that office will resolve the ambiguities and overlaps by deciding which agency will regulate which activities on the OCS. We believe that this is a dangerous and irresponsible way to legislate.

Also, the Occupational Safety and Health Act of 1970 specifically restricted OSHA's powers on the OCS to a back-up role to cover those hazardous working conditions where the Coast Guard and DOI were not using their statutory powers to regulate. The permanent role contemplated in the Committee bill is an indirect amendment to that Act and falls within the jurisdiction of another standing Committee of the House.

Besides safety regulations, there are several other ambiguities which are cause for concern.

In the Committee bill, revised section 8(b)(4) makes exploration of a lease area contingent upon approval of a development and production plan. Under new section 25, however, that plan is not filed until after exploration has resulted in a commercial find of oil or gas.

In the Committee bill, section 11(g) of the OCSLA would require the Secretary to seek qualified applicants for on-structure drilling with the intent of finding oil and gas. It is highly unlikely that there will be any applicants. Although it would seem that participants would have an advantage in the bidding process, each would of course, be competing against the others. Also, similar data implying the presence of petroleum deposits could generally be obtained by non-participants just off-structure at a lower cost and lesser drilling depth. We must point out that a single well in which a discovery of oil or gas is made will not be of much assistance in the leasing process. Several such wells are usually needed to delimit a field, or even to know in which direction it extends. We question who will finance such extensive drilling without some rights to the resources discovered, especially since a non-participant could win a lease for the tract and reap financial benefits from the efforts of those who made the discovery. In short, therefore, there is little incentive to participate in the cost of non-lease on-structure exploratory drilling.

DELAYS THROUGHOUT COMMITTEE BILL

Whenever leasing or operations on the OCS would be likely to cause undue or avoidable environmental harm, they should not be allowed to proceed. On the other hand, bureaucratic procedures and unproductive court challenges which serve only to delay eventual approval should not be tolerated. We commend the Committee in its attempts to further minimize the risk of domestic OCS production. The effect of its chosen procedures, however, is to tolerate the even greater risk associated with continued reliance on imports via tankers for an unnecessarily long period of time. For example:

Under new section 18(c)(4), all OCS leasing is cut off after June 30, 1977, unless an approved five-year leasing program is in effect. In view of the procedural requirements mandated

in the Committee bill, and depending on when the bill may be signed into law, it may be impossible to meet that deadline. Indeed the Committee Report acknowledges that these procedures might take 14 months. To this must be added still more time for review of comments and possible revision of the proposed plan before it is approved and submitted to Congress. A better approach therefore, which would still insure compliance with Congressional intent, would be to make the deadline 18 months after date of enactment.

The management of the OCS under the five-year leasing program must consider "all of the economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf". Despite every reasonable attempt consider *all* of these values, the number is limitless, and we are certain a litigant bent on delay will be able to find an additional resources whose values was not considered. A simple amendment dropping "all of" the values would eliminate the opportunity for these delaying tactics.

The Committee bill allows the Secretary to delay up to 120 days after receiving comments from affected States in deciding whether to approve a development and production plan too minor to be subject to the environmental impact statement (EIS) process. Since it has already been determined that approval of the plan will not have a significant effect on the environment, thirty days, or at most sixty days, should certainly be sufficient to review and consider State comments.

The Secretary can delay approval of a development and production plan indefinitely under the provisions of the Committee bill, since there is no time limit by which he must decide if an EIS will be necessary. Thirty days should certainly be sufficient for such a finding.

We believe it is very likely that NEPA will require that an EIS be prepared prior to the approval of major development in OCS frontier areas. The Interior Department has developed an extensive body of internal regulations to guide its officials in determining whether a proposal is a "major Federal action". In fact, the Council on Environmental Quality has expressed its satisfaction with Interior's procedures in this regard. Why then does the Committee bill include a provision requiring the Secretary to declare development and production in "any structure, area, or region" of the OCS to be a major Federal action at least once prior to major development. Either it is a major Federal action, or it is not. If there is a significant effect on the environment, the Secretary has no choice but to prepare an EIS pursuant to NEPA. If there is no significant environmental effect, all the declaring in the world cannot make it a major Federal action, and the inclusion of this language in the Committee bill will only serve to unnecessarily delay the development and production of OCS resources. Since this is an indirect amendment to NEPA, it should be handled by the full Merchant

Marine and Fisheries Committee, which has jurisdiction. NEPA is the most effective environmental law we have, and it should not be tampered with in this bill.

An amendment adopted by the Committee, dealing with leasing between three and six miles offshore, will be fully discussed in the next section. Two aspects of the amendment, however, which would become OCSLA section 8(f), involve unconscionable delays. If a Governor accepts the required offer of the Secretary to jointly lease any area which may contain deposits extending under State waters, it must be offered "under mutually acceptable terms". If the Governor then refuses to agree to terms, he could delay leasing of such lands indefinitely. In similar fashion, delays could occur because revenues from such lease are held in escrow "until such time as the Secretary and the Governor of such coastal State determine" the proper apportionment of funds. We imagine that these controversies could eventually be settled by lengthy court battles between the Secretary and the Governor, but why should this country wait for its energy, or tie up so much capital, while these disputes take place?

Other delays involving the Federal-State relationship will be discussed in the next section.

CONFUSED FEDERAL-STATE RELATIONSHIP

The Committee has made welcome advances in expanding State input into Federal OCS decisions which may affect their interests. Of particular merit are the sections which insure the timely flow of useful information to affected States to enable them to plan for impacts which may occur in their jurisdictions. There is also increased opportunity for State input into Federal OCS decision-making. Unfortunately, the Committee bill sometimes goes too far, or not far enough, creating confusion in the Federal-State relationship.

Affected States and Regional Advisory Boards are given an absolute veto power over OCS lease sales, and development and production plans, in the absence of a Secretarial finding of national security or "overriding national interest". Although we believe the Secretary should give great weight to State requests and recommendations, the Supreme Court has ruled that the OCS is an area of exclusive Federal Jurisdiction. This cannot be altered through simple legislation. A balanced approach would require the Secretary to review such requests and recommendations, and explain his reasons if they cannot be accepted.

In the five-year leasing program required by the Committee, the timing and location of OCS activities must be based on a consideration of the "laws, goals, and policies of affected States". Also, development and production plans can be cancelled for inconsistency with "any valid exercise of authority" of affected States and their political subdivisions. The quoted language is highly ambiguous. We know what a law is, but how is the Secretary to determine the "goals, and policies" of a State? What is a "valid exercise of authority"? For example, village boards usually have authority to pass resolution on a variety of

subjects affecting their interests. The Speaker receives several every week. If a seaside village passes a resolution stating that development of the adjacent OCS should not take place, is that a "valid exercise of authority" within the scope of the Committee bill? Would it require presumptive disapproval of a development and production plan?

The Committee should have concerned itself with removing these sorts of ambiguities from the Act, not adding new ones.

The amendment adopted by the Committee dealing with the Federal zone three to six miles offshore, mentioned earlier in this discussion, requires that an offer of joint Federal-State leasing be made if a geological structure extends into the submerged lands of a coastal State. The Committee acted out of concern that future Federal leasing activities on Federal land might deplete resources from the State's portion without the State sharing in the revenues. This has not been the case in the past. Section 7 of the current OCSLA already provides a framework to settle such controversies. In fact, there have been many agreements under section 7 in intensely developed areas of the Gulf of Mexico. Off southern California, the Department of Interior voluntarily created a three-mile buffer zone where no Federal leasing takes place unless the State leases within its area of jurisdiction. This voluntary Federal action has aided the State's economic interest. Further, the amendment could have provided an additional explicit power which the Secretary could exercise as an optional procedure where appropriate. It is a mistake, however, to make this a *required* procedure, when other alternatives, already available under current law, might better serve both State and Federal interests. This section could also serve to indefinitely delay OCS leasing in these areas, as discussed earlier, thus infringing on Federal sovereignty on the OCS. If any leasing did indeed take place, the money taken in as a result of the lease sale, such as bonuses, rents, and royalties, would be tied up indefinitely by lawsuits over the amount to be paid to the respective governmental entities. In an attempt to solve one theoretical problem, the Committee has created several substantive ones.

There is no opportunity, in the Committee bill, for the Governors of potential affected States to make suggestions in the initial drafting of the five-year leasing program. Their role is limited to one of reaction only, after the first draft of the program has been prepared and published, risking a bureaucratic stake in the status quo. The addition of language requiring the Secretary to invite early State input, as we proposed to the Committee in a substitute for Section 18, would be a significant improvement in the bill.

ANTI-ENVIRONMENTAL PROVISIONS

Several provisions of the Committee bill work against the environment, instead of protecting it.

The bill, as reported, attempts to define what is meant by marine, coastal, and human environment. Any such definition serves as a limiting factor and could work to exclude common meanings which are not included. For example, in non-coastal areas the bill offers no consideration of atmospheric and biological factors. NEPA wisely uses the term "human environment" and, by not defining it, gives it the broadest possible meaning. The NEPA approach should be followed

in this bill as well. At the very least, some recognition should be given to the non-coastal atmosphere and biota.

The Committee rejected an opportunity to afford additional protection to the environment of higher risk areas of unusually deep water or unusually adverse weather conditions, such as off the Alaskan coast. The Minority proposed an initial lease term of up to ten years in such cases, rather than five years with a possible extension. Our proposal not only would have increased Federal revenues from lease sales in these areas, but would have given lessees time to schedule exploration activities in good environmental fashion without the pressure of an early deadline. Since a lease is automatically continued if drilling is taking place, lessees might be forced to drill a marginally safe well to avoid the necessity of seeking a Secretarial extension. Also, the bill claims among its purposes the encouragement of the development of new and improved technology. The assurance of a ten-year lease term provides lessees an incentive to devote capital to the development of such improvements. Since we cannot legislate a timetable for the discovery of solutions to technological problems, the risk of early lease expiration mitigates against industry efforts in this field.

ANTI-COMPETITIVE PROVISIONS

Despite the Committee bill's avowed purpose of preserving and maintaining free enterprise competition, there are at least two provisions which discourage the entry of small competitors.

The Secretary is permitted to lease tracts on the basis of entire geological structures or traps, or for a reasonable economic production unit, as he may determine. Under most leasing conditions the smaller the tract size, the greater the likelihood that a small company can successfully compete for the tract. The Secretary should not be allowed to exceed the current maximum of 5,760 acres, except where a larger tract is necessary to form a reasonable economic production unit.

Small companies are generally permitted to offer joint bids with each other or with one major oil company, to be able to compete for leases. Two major companies are not. The Committee bill would force small companies to compete for one percent shares of so-called Phillips Plan leases on the same basis as the majors by banning joint bids, except where the Secretary makes a specific finding as to their necessity. One percent of the cost of a lease may not appear like much money, but leases for a single 5,760-acre tract have already been sold for over \$200,000,000. The \$2 million that one percent of such a tract represents could jump to the tens of millions, if the Secretary moves to structure leasing as discussed above. This represents more capital than most small companies can accumulate individually for bonus money for a Phillips Plan share, especially since they will also have to share in the expenses of exploration. The small companies should be allowed to joint bid under this system in the same manner as under the other systems, so that they can compete with the giants of industry on a more equal footing.

CONGRESSIONAL CONTROL NEEDED

The Committee bill unwisely allows the Secretary to approve his own five-year leasing program. We have proposed that the program

be approved by Congress. Approval would be presumed if neither House passed a resolution of disapproval within 60 days of submission. Since this relates to the overall program, and not to the specific decisions made later, we believe this mechanism is both appropriate and necessary to assure compliance with Congressional intent. This is especially important since the very creation of this ad hoc Committee was a reaction to overlapping jurisdictions and ineffective Congressional oversight. The exclusion of Congressional approval also deprives the States of an important public forum within which to voice their views respecting a proposed program and a chance to influence the outcome quickly through their elected representatives. The Committee bill offers them nothing but lengthy and expensive court suits.

UNWISE RESTRICTION ON LEASING ALTERNATIVES

We have no objections to the Committee bill's general requirement that the Secretary's choice among alternative bidding systems accomplish the purposes and policies of the Act. We do, however, think it highly unwise to impose an "absolute" requirement that previously untried bidding systems be used for at least ten percent of the area offered for lease in each of the next five years. This requirement is an absolute one, because the only way the requirement can be reduced is through affirmative action by both Houses of Congress within 30 days—a logical and practical impossibility where an actual national emergency is not involved. The only recent example of Congress acting that fast was the ban on television blackouts of sold-out professional sports events. Even if Congress agrees with the Secretary's reasons for not using untried systems in a given year, it would most likely have to pass a new law granting an exemption. Two-House positive approval is a highly unusual procedure which completely breaks down the Constitutional separation of powers. The more frequent and defensible one-House disapproval mechanism, is the proper procedure to use here, because it allows Executive Branch decisions to proceed in the absence of Congressional objection.

SHIFT OF STUDIES ILL-ADVISED

The transfer of executive authority over baseline and monitoring studies from DOI to the Department of Commerce (NOAA), as provided for in the Committee bill, is a handicap both to the proper management of the OCS leasing program and to the studies themselves. DOI currently makes the greatest possible use of NOAA's scientific capabilities for this program. More than half of the studies are being conducted by NOAA under Interior's direction, and already many of these are being subcontracted by NOAA to the private sector. These studies should be designed and timed to serve DOI decision-making needs under the OCS program. This cannot be done adequately if Interior is deprived of control over the studies. The studies should be put back in DOI where they belong.

Also, new section 20(a)(4), which the Committee bill would add to the OCSLA, requires that the studies be designed to predict impacts. That is a job for an EIS, and is entirely different from a baseline study. If such predictions are important enough to deserve the

expenditure of taxpayer's dollars and government resources, they are important enough to be made under NEPA. If not, they should not be required in this bill.

4. OFFSHORE OIL SPILL POLLUTION FUND

Many significant improvements were made in title III during Committee mark-up. There remain a number of areas, however, where improvement is still needed if this title is to insure that clean-up costs and damage claims are promptly paid, and that the proper party pays them. In still others, we have every reason to hope than an understanding of various problems in the reported language can be reached among Members of the Committee, and that perfecting amendments will be offered jointly on the Floor.

PREEMPTION

The Committee bill establishes a national system of liability and claims settlement procedure with an expedited settlement mechanism. All claimants, regardless of location, are entitled to receive compensation for a specified set of damages. This would be a great step forward, were it not for section 322. This section destroys the rationality of the rest of the title by permitting States to set different limits of liability, and require OCS operators to pay into State oil spill funds, for the same set of damages. This will tie up capital sorely needed for additional exploration and development, and could significantly increase the cost of OCS energy resources to the consumers of this Nation.

These provisions of State law should be preempted by the Federal system, but only with respect to the damages specified in this title. States would be free to provide for additional types of damages under whatever system they prefer, and could establish funds for payment of claims under that system.

Without the "limited" preemption which we propose, multiple actions could be started under both the State and Federal procedures, with the Claimant trying to delay accepting an award under one system while waiting to see if he can get more under the other system. This creates delays and uncertainties on all sides and implies that one set of courts would be likely to award higher amounts than the other. Since all that can be collected is actual damages, there should be no significant difference.

The Committee took one step toward preemption by adopting an amendment requiring the States to accept compliance with the financial responsibility section of this title as compliance with similar provisions of State law. If States are then permitted to set higher liability limits, an uninsured corridor would be created, which could bankrupt smaller companies. This anomaly should be eliminated by Federal preemption of all matters respecting the set of damages specified in title III.

JURISDICTION

Although the Committee bill does not preempt State law, it almost completely overrides nearly all of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), which regulates discharges from facilities located in State waters. The definition of "offshore

facility" in section 301(4) of H.R. 6218, as reported, extends Title III to facilities located solely within State waters. This is an unconscionable infringement on the authority of the Public Works Committee and should not be in this bill. The definition should be revised to limit the jurisdiction of Title III to facilities located on the OCS.

GROSS NEGLIGENCE AND WILLFUL MISCONDUCT

The Committee bill sets the discharger's limits of liability for damages at \$35 million for offshore facilities and \$150 per gross registered ton for vessels. These limits do not apply, and liability is therefore unlimited, if the discharge was the result of gross negligence or willful misconduct "within the privity and knowledge" of the owner, operator, or person in charge, or if it resulted from "a violation" of regulations.

We agree with the basic thrust of these provisions, although violations of regulations should more properly be viewed on a simple negligence vs. gross negligence basis. The language quoted above, however, creates a situation which we assume, or at least hope, was unintended.

Suppose an offshore operator complies with every safety regulation, urges his employees to do so, and makes spot checks to satisfy himself that the employees do in fact comply. If a welder then deliberately removes his safety goggles, burns his eyes, drops his torch which then cuts through a pipe and spills some oil, should this cause millions of dollars of additional liability to be imputed to his employer? It would, under the Committee bill.

An employer is generally held responsible for the simple negligence of his employees. For example, the owner of a truck would have to pay for personal injury and property damage in a collision caused by an error in judgment of his truck driver. However, if the accident happened after the driver had diverged from his route in order to visit his girl friend or resulted from the driver's intentionally running into another vehicle, the owner of the truck would not normally be held liable.

A similar test should be used on the OCS. The only actions which should cause unlimited liability for damages should be the gross negligence or willful misconduct of the person held liable. A reasonable compromise could extend this to apply to actions of the person in charge.

LEGAL PROBLEMS

There are at least four problems in Title III regarding disputes requiring judicial action.

Although the language is ambiguous, it appears that the Attorney General is permitted to decide what constitutes a "class" for purposes of a class action under Title III. A group of damaged persons should be allowed to decide this themselves under applicable provisions of existing law.

The Attorney General is permitted to represent a class of damaged persons in the recovery of claims under this title. Why should the taxpayers pay the legal fees of people who might collect from the oil companies? Even worse, there could easily be a situation where the United States, through the Attorney General, sues the United States through the Secretary of Transportation. Worse still, since the At-

torney General usually represents the Secretary, he could appear as counsel to both sides, a conflict-of-interest, if there ever was one. These provisions should be eliminated.

If the Attorney General declines to institute court action the Secretary can go his own way and appoint attorneys to represent the Fund. The Attorney General is the chief legal officer of the United States. If he advises that a suit is unwise, his judgment should be binding on other agencies.

Section 314(b) of the Committee bill requires that attorneys' fees and court costs be awarded to claimants in certain instances of judicial review. We believe that such awards should be permitted, but not required. The courts are in the best position to judge whether this will serve the ends of justice. For example, if one major oil company is claiming damages to one of its facilities which were caused by another oil company, why should the first get costs as a matter of right?

DOUBLE TAXATION OF ENERGY CONSUMERS

The payment of a fee on OCS oil production is an indirect tax which is passed along to consumers by the oil companies. This quasi-tax is unavoidable, if there is to be an oil spill fund of the sort envisioned in this bill. There is one tax in Title III which can and should be avoided, however.

When recoveries from dischargers, fines, interest, and other collections push the revolving account over its \$200 million limit, the Committee bill provides that the excess be paid into the general fund of the Treasury. These excess sums were "earned" by the consumers of oil in meeting the specific purposes provided in the bill, however, and it is unfair to use them for general governmental purposes. Also, if future payments by the Fund make fee collections necessary, which would not have been needed were those excess sums available, this would be a double tax on the consumers: their original fee payments, which eventually gave rise to the excess, and the later fees. On the other hand, we do not want to tie up capital unnecessarily by building up the Fund higher than needed.

There is a way out of this dilemma. The excess could be paid into the general fund of the Treasury, as provided, but (subject to appropriations, of course) be repaid to the Fund from general revenues whenever the revolving account fell below \$200 million.

LOSS OF ROYALTIES

The Committee bill limits recovery by the Federal government for loss of royalties and net profit share revenues to a period of one year. These amounts are not computed on a time basis, however, but on the amount of production, regardless of the time period. This provision would be changed to allow recovery for lost royalties and net profit share revenue computed on the amount of oil actually spilled.

SUBROGATION

Subsection (d) of section 308 provides among its list of defenses to liability "the negligent or intentional act of . . . any third party". Sub-

section (e), however, provides for subrogation in cases where a discharger is held liable due to specified third party negligence. Subsection (e) is therefore unnecessary, since it covers an impossible circumstance.

Subsection (c) (1) also speaks of a discharge resulting from the "unseaworthiness" of a vessel. This term is state-of-the-art language used in personal injury claims under the Jones Act and the Longshoremen and Harbor Workers Compensation Act. It has occasionally been applied to cargo damage claims by contract. It has nothing to do with oil spills, and would need to be defined if used in this title.

POSSIBLE JOINT AMENDMENTS

We will be discussing the problems listed below with other Members of the Committee prior to Floor action in the hopes of reaching agreement on joint amendments to Title III:

A provision is needed restricting the rights of a foreign claimant to recover damages under this title, unless his country permits similar recoveries by Americans.

The Committee bill limits recovery of loss of income due to oil spills to one year. This is far less than a claimant might be able to recover under existing law. The restriction should either be liberalized or eliminated.

The discharger's defenses against damage claims should be extended to apply to clean-up costs as well.

A claimant should be able to recover interest on his damages.

Although section 309 makes funds "available" for several purposes, there is no requirement that they actually be disbursed. There should be a disbursement requirement.

The Federal Government should pay for war claims and cases where oil is spilled due to any type of Federal Government negligence.

When the Fund settles a claim and then recovers from the discharger, it should be able to recover administrative costs as well.

The collection of fees is "imposed on the owner of the oil when such oil is transferred from a well to a pipeline or vessel". Who owns the oil at the point of transfer, the transferrer or transferee? The Committee Report says it is the former, but this is ambiguous in the bill. What if the oil is not transferred from a well directly to a pipeline or vessel—does it escape the fee? In any case this is too late. Oil can be stored on artificial islands or platforms, or under the sea, creating the possibility of discharge. The well or platform itself can discharge oil. The fee should be imposed on oil "produced", which includes any oil extracted from the OCS. It should be collected from the lessee or from the operator of the production facility.

The Committee bill permits the Secretary to vary the financial responsibility requirements based on the capacity of the facility, tonnage of the vessel, or other relevant factors. If this means that the level can be set below the limit of liability, we create an uninsured "corridor" as discussed earlier, which could destroy a small company. This should be clarified.

The Committee bill requires an increase in the limit of liability and financial responsibility as the wholesale price index increases. What if it decreases? Also, we question whether this is really the most appropriate index, and how it relates to the costs of clean-up and damages.

Since the Fund is responsible for the excess over the liability limits, claimants do not get any benefit from this increase. All it does is hurt the smaller companies who would then have greater liability and have to buy more insurance, since they cannot self-insure for the higher amounts. This is an area for meaningful compromise.

Section 312 makes the Secretary of Transportation the trustee of natural resources. This could involve DOT owning minerals or national parks. The President should be designated as trustee, instead of the Secretary. Also, it appears that the Secretary can recover for damage to a State's natural resources, and vice versa. The language needs revision.

Section 314 gives no standards for the courts to follow in judicial review of decisions of a hearing examiner. Are these cases to be reviewed under 5 U.S.C. 706? If not, appropriate standards and procedures should be stated in the bill.

Section 318 requires that information prescribed in regulations be furnished to the Secretary, and that he and the Comptroller General have access to "any" books and records of companies involved in OCS activities and subject to Title III. Language is needed to limit the applicability of this section to those records which are relevant to the administration of this title.

The authorization of administrative appropriations seems to reflect the high cost of administering a front-end fund. Since the Committee decided to change to a back-up fund, a wise decision in our view, this title should not cost nearly this much to administer. Also, we question whether, in compliance with the Rules of the House and the Congressional Budget Act of 1974, it is necessary to restrict payments by the Fund, in satisfaction of claims, to appropriated amounts. Since these payments are based on unpredictable contingencies, what would be an appropriate level? The Fund is self-financed, so why should claimants have to wait for an appropriations bill which may be delayed for many reasons extraneous to this Act? We hope that some accommodation can be reached with the applicable Committees in this regard.

5. THE COMMITTEE REPORT

We had not intended to include comments on the Committee Report in these Views. It should have been sufficient to limit our discussion to the bill itself. We approve of using a committee report to serve as legislative history and indicate Congressional intent. The so-called "Section-by-Section Analysis", however, so often directly conflicts with the text of the bill, or imposes limits or requirements not stated or implied in the text, that it must be looked upon as wishful thinking. All too often it appears to represent what its authors wish the Committee had done, rather than what it did do. Others are just misleading.

It is incumbent upon us to set the record straight. In each case, we invite our colleagues to inspect the text of the Committee bill and decide for themselves.

SAFETY REGULATIONS

The Committee Report states that sections 4(e) and 4(f) of the OCSLA, which give certain regulatory authority to the Coast Guard and the Army respectively, must "now be read in light of sections 21 and 22" which the Committee bill would add to the Act. Nothing in

either of the two new sections makes any change whatsoever in section 4. When the Executive Branch has two provisions of law under which it may promulgate regulations, it may use either one it wishes as sufficient authority for such promulgation. Section 21 may require joint regulations, and section 22 may require OSHA to enforce Coast Guard regulations, but this does not prevent the Coast Guard from exercising its independent authority under section 4(e), for example.

The Committee Report states that the participation of OSHA in preparing regulations for employee safety is "required" under new section 21. A look at that section shows three possibilities for joint action: (1) Interior and Coast Guard, (2) Interior and Labor (OSHA), or (3) all three. Since choice (1) omits the Labor Department, OSHA's participation is obviously not required.

The Committee Report then goes a step further and states that OSHA should be "given lead agency responsibility" for the development of employee safety regulations, to the maximum extent possible. This may be the desire of some Members of the Committee, but it cannot even be inferred from the legislation. It is certainly not binding on the Executive Branch.

The Committee Report correctly notes that "the failure of the appropriate agency to act" has been a reason why the safety of divers in OCS activities has not been covered by regulations or standards. It omits to mention, however, that for over five years OSHA itself has had the same responsibility to protect those divers and has not acted. That is why we are so pleased that the Committee accepted our amendment requiring that OSHA fulfill the mandate of its own Act and promulgate interim standards within 60 days, to remain effective until permanent standards are established under section 4(e) or new section 21 of the OCSLA.

ACCIDENT INVESTIGATIONS

When accident investigations come within the authority of both the Coast Guard and OSHA, the Committee Report "intends" that they act jointly. The specific example given is that they "are to utilize the services, personnel and facilities of each other, or of any other federal agency". This is probably what will come to pass, but under new section 22(d) (3) it is optional, not required.

STATE AND REGIONAL BOARD RECOMMENDATIONS

Section 19(d), which the Committee bill would add to the OCSLA requires the Secretary to accept certain recommendations of States or regional advisory boards, unless they are inconsistent with national security or overriding national interest. Overriding national interest, in its turn, must be "based on the desirability of obtaining oil and gas supplies in a balanced manner, consistent with the findings, purposes and policies of this Act".

Since this language will appear in the OCSLA if H.R. 6218 is enacted, the words "this Act" refer to the OCSLA. The Committee Report, however, incorrectly states that the words refer to H.R. 6218. Its findings and purposes are in Title I. That title is not substantive law, and there was a lengthy discussion to that effect during mark-up of the bill. Accuracy here is extremely important, since the correct reference will be the basis upon which the acceptance or rejection of State or regional advisory board recommendations will turn.

The Committee Report goes on to attempt the creation of a presumption of fact that the recommendation of a State or regional advisory board is somehow more valid than a finding of the Secretary rejecting the recommendation. The Report wants this to be given "great weight" in private citizen suits under new section 23. The text of the bill, as quoted above, gives the Secretary a reasonable standard on which to base his finding, and it is that standard on which his actions must be judged.

SUSPENSIONS

The text of the bill and the Committee Report both list three reasons for which a lessee may request a suspension of his lease, together with an extension of the lease for an equal period of time. The Report then improperly limits this to an extension of the "five-year" lease term. The bill makes no such restriction, however, and the extension is available at any time during the life of the lease. The current OCSLA and H.R. 6218 both provide several ways in which a lease may continue to run after its initial term, the most important of which is production of oil or gas.

The Report also states that the purpose of providing lessee-initiated suspensions is to allow "unitized" exploration or development, "common" pipeline placement, or proper and safe delivery by tankers. No such restrictions appear in the bill, however, so these should only be taken as examples.

COMPENSATION FOR LEASE CANCELLATION

When leases are cancelled for environmental reasons under the Committee bill's revision of section 5 of the OCSLA, the lessee is not foreclosed from seeking compensation under other laws or under the Constitution. The Report states that "it was the Committee's belief that the awarding of compensation would be more liberal for those leases issued prior to the date of enactment" of the revised section.

There are, however, no grounds for this belief in the text of the bill. The court will base its award on the value of the rights of which the lessee is being deprived due to the cancellation of his lease. The fact that he knew the Secretary might exercise an option to cancel the lease through no fault of the lessee has nothing to do with compensation.

JOINT BIDDING RESTRICTIONS

New section 8(a) (7), as proposed in the Committee bill, imposes a ban on all forms of joint bidding for percentage shares of a "Phillips Plan" lease. This ban can be overridden by the Secretary by a finding that joint bidding is "necessary to promote competition". The report tries to limit this to cases of silent economic partnerships. There is no such restriction in the bill. In fact, a more common case will probably be where a small company cannot afford to bid by itself for even one share of a lease, but wants to participate in OCS exploration and development.

JOINT FEDERAL-STATE LEASING

The Committee report claims that if a Governor accepts an offer by the Secretary for joint leasing of a common structure, and they cannot agree on terms for the lease, the Secretary can lease the Federal portion

on his own. The text of the bill does not give the Secretary this option, but appears to delay leasing indefinitely. The language of proposed section 8(f) (3) is as follows:

(3) Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to jointly lease any such area. If the Governor accepts the offer, the Secretary and the Governor shall jointly offer such area for lease under mutually acceptable terms. If the Governor declines the offer, the Secretary may lease the federally owned portion of such area in accordance with this Act.

In other words, the only way the Secretary can lease the Federal portion is if the Governor declines the offer, not if they don't agree on terms.

THE LEASING PLAN

The Committee Report states that Congress can "adopt appropriate legislation" to overrule the approval of a section 18 leasing program. Since the program was developed by the Executive Branch, any such legislation faces certain veto from a hostile President and cannot be enacted except by a two-thirds majority over a veto. We hope this will put the remark in its proper context.

More importantly, the Report states that a new leasing program must be prepared at least every five years. We are sure this was intended, but we can find nothing in the Committee bill that imposes such a requirement.

Section 18(a), as proposed, provides for a leasing program to "meet national energy needs for the five-year period following its approval or reapproval". Subsection (d) tells the Secretary that "he may revise and reapprove such program, at any time". Nothing says he "shall" reapprove the program.

It even appears that leasing could continue if the initial five-year program lapsed without the approval of a succeeding one. Subsection (c) (4) permits leasing if "it is for an area included in the approved leasing program". Since there would be only one "approved leasing program" (the expired one), leasing could continue as long as the area had been previously listed.

DEVELOPMENT AND PRODUCTION PLANS

There are three possible reasons for disapproving a development and production plan under proposed section 25. The first two are procedural, and the last is environmental. The environmental one cancels the lease, but entitles the lessee to recover his bonus, rent, interest, and direct costs. That is why we cannot understand how the Report can speak of a *non-environmental* (procedural) disapproval of a development and production plan followed by an *environmental* cancellation under the proposed revision to section 5. This should not be the case.

OIL SPILL DAMAGES

In discussing damage claims for loss of income under section 307(3) of the Committee bill, the Report indicates that "gross profits" are implied. There was no discussion of this during Committee hearings

or mark-up. In an attempt at making an employer the agent for his employees, this interpretation would have the effect of foreclosing individual claims from the employees themselves, as well as from anyone who ever did business with the claimant. Either that, or it would give a massive windfall profit to businesses which can show loss of gross income, but no longer have to meet expenses against such revenues. What a break an oil spill would be to a business that was running at a loss! Many firms do millions of dollars worth of business (having millions of dollars of "gross income"), but also have many more millions of dollars of expenses. This certainly cannot be what the Committee meant when it enacted section 307.

6. CONCLUSIONS

The Committee has come a long way in the past year. The level of expertise developed and interest maintained has been remarkable. As the first, and to date the only, ad hoc committee organized under the new Rules of the House, it has served as a valuable experiment in bringing together Members from the three standing committees having principal jurisdiction over OCS activities.

In order to make this bill an effective vehicle for management of the OCS we will offer a substitute for Title II to remove its ambiguities and solve the problems outlined above. Similarly, individual amendments will be offered to improve and perfect Title III. We hope our colleagues will join in support of these amendments, and that we will be able to vote for the bill on final passage.

We are concerned, however, about oversight. If this bill, hopefully in amended form, is enacted, it will make many complex changes in the way OCS activities are administered and conducted. This ad hoc Committee will be disbanded when the changes become effective. We fear that a return to the previous fragmented jurisdiction may result in ineffective oversight, or none at all. Since the 94th Congress claims improved oversight as one of its chief contributions to effective Constitutional government, it is imperative that coordinated Congressional control over Executive Branch actions on the OCS be established.

There are many possible ways to provide for effective oversight. Committee jurisdictions could be made more explicit or redrawn, a permanent select committee could be established with or without legislative authority, or a joint subcommittee of our three "parent" standing committees could be constituted. Of the three, a joint subcommittee offers perhaps the best opportunity to recognize the legitimate concerns of the three committees, while insuring coordinated oversight, and without adding to the number of separate committees of the House. Whatever means may be decided upon, we urge the leadership of the House to address this problem before this bill is enacted into law. We pledge our complete cooperation.

Respectfully submitted,

HAMILTON FISH, Jr.
EDWIN B. FORSYTHE.
PIERRE S. DU PONT.
DON YOUNG.
ROBERT E. BAUMAN.
CHARLES E. WIGGINS.

XVIII. ADDITIONAL MINORITY VIEWS OF CONGRESSMAN DON YOUNG

COASTAL ZONE FUND NEEDS STRENGTHENING

The authorization levels for Title IV, the Coastal Zone Impact Fund, while representing a push in the right direction, need strengthening in order for the federal government to meet its responsibilities while drawing oil out of the Outer Continental Shelf.

It is very clear that the federal government profits from the development of the OCS. The OCS lease area is a Federal zone beyond three miles. Its oil is federal. It will be managed by the federal government. And the revenues will go to the federal government. This is not to say that the development should not take place—clearly it should. But the intent of the development is clear, ever since it was said that OCS exploration was “in the national interest.” And it is the states such as Alaska who will have to bear the burden and the cost of the development, unless adequate compensation is made.

When the Alaska pipeline was started, considerable amounts of front end capital was required by the state to meet the burden of properly preparing for the rush of development that comes with the pipeline construction. Sewer systems and services had to be expanded. Schools had to grow to meet the larger numbers of family children. Roads had to be improved. Almost every conceivable area of concern to state and local government had to be expanded. The situation will be no different with accelerated OCS development in this respect.

But there is a critical difference between the pipeline construction and OCS development that must be noted. The pipeline territory, like any oilfield in the state, generates royalty revenue for the state. The revenues have eventually been sufficient to pay off the cost of impact funding. Yet with the OCS leasing, no royalty revenue goes to the state as a result of the development, even though the same state impact occurs that brings increases in population, and greater demand on services and facilities. This sort of expansion is unique from normal business expansion, which brings additional property and income tax revenue that can finance the impact. This time, the business is located on federal land and is guarded from the purse strings of state and local government.

The OCS committee has recognized part of this situation by establishing section IV of H.R. 6218. It is a good provision with good intent. In measuring the onshore impact of the OCS development, however, it becomes apparent that the 50 million dollar authorization in automatic state grants and 125 million dollar authorization in discretionary funds, distributed equitably among all the coastal states affected in the coastal zone, is not sufficient to cover the costs that the local and state government will have to bear as a result of the federal development. This will leave the states in serious economic straits,

especially in the more heavily impacted areas, as they will suffer from overcrowded schools and services, insufficient sewerage systems, poor roads, and higher state and local taxes. Any federal loan system, while temporarily helpful, only puts off the burden that the local and state governments will eventually have to bear.

The cost of OCS development is best figured on a basis of per capita cost to state and local government as a direct result of population growth resulting from OCS activities. The increased demand on services is proportional to the number of people arriving in the state. The projected population increases, estimated by the OMB as growth directly attributable to OCS development are conservative estimates, as are the per capita cost figures, which were figured from FY 1975 and do not account for the recent high levels of inflation that the state has experienced:

Per capita cost figures¹ resulting from increased population

State government.....	\$1,630
Local government.....	851
Total	1,981

¹ Figures taken for growth from Alaska pipeline.

Projected population growth directly attributable to OCS development.—94,000 by 1985. (OMB estimate.)

Total calculated cost to State and local government from OCS.—\$186,214,000 per year.

While the revenue received from the Alaska pipeline was sufficient to meet much of the cost of impact funding, this is presently impossible to meet since no revenue is coming into the state as a result of OCS development. The only increased revenue available comes from increased corporate income taxes, personal income taxes, and other induced corporate taxes, and some property taxes. In the case of the pipeline, however, the large majority of the revenue comes from petroleum property taxes, royalties, and severance taxes, none of which is available to the state in the leases which are more than six miles offshore. The projected revenues from the pipeline illustrates the point:

REVENUES LOST TO FEDERAL GOVERNMENT
[In thousands of dollars]

	1. Petroleum property taxes	2. Royalties	3. Severance taxes	4. Corporate personal and other induced taxes
1985.....	58,966	56,301	15,764	23,145
1990.....	46,146	56,301	15,764	20,245
1995.....	33,328	56,301	15,764	16,845

In 1975, money from sources in increased income and corporate taxes, column 4, comprised less than 15% of the total potential revenues, and yet is the only revenue available to the states from OCS development. Clearly, the source of revenue from OCS development is minimal compared to the pipeline. Even this figure is overestimated, since capital expenditure related to OCS will be greatly reduced on state land in the OCS development, with resultant drops in real personal and corporate income taxes.

The critical concern, then, becomes, how does the state come up with the money needed to expand? At an additional cost of 186,214,000 dollars a year, H.R. 6218 cannot begin to meet the need of the state as presently funded. Clearly the authorization must be increased. Even if Alaska gets 50% of the entire national fund, assuming that 100% of the money authorized is appropriated for the Act, less than half the need will have been met.

The situation becomes more serious when revenue is considered as an issue of immediate concern. Front end funding, as it is called, is a requirement for large amounts of money before the fact, to build facilities and pay for services before the impact is felt. Anticipatory development is obviously a superior system, but funding is a difficult endeavor when revenue is not produced until after the impact is suffered. A look at pipeline costs and revenue illustrates the point. Note that the cost is exclusively impact cost, and does not include other related costs.

(In thousands of dollars)

	Cash inflows	Cash outflows
1976.....	123	223
1977.....	277	1,883
1978.....	1,595	5,979
1979.....	5,397	20,889
1980.....	10,994	34,589
1981.....	11,143	17,451

Alaska was fortunate in funding for the Alaska pipeline project, because front end funding was available to state and local governments by the state Prudhoe Bay lease, which garnered some 900 million dollars. The money has already been invested, and there is now no additional source of funding like it. The only two alternatives are to raise taxes or to abandon funding for services and facilities.

Even if it were possible, the state should not bear the responsibility of funding the impact from this federal project through pipeline revenue. This is a separate state matter, and the state deserves the money for investment for other worthy projects, instead of underwriting the cost of a federal project. The OCS is a federal project, and should be a federal responsibility.

DON YOUNG.

**XIX. ADDITIONAL MINORITY VIEWS OF CONGRESSMAN
PIERRE S. DU PONT AND CONGRESSMAN ROBERT E.
BAUMAN**

While we have signed the Minority Views that accompany this report and concur with virtually all the comments made therein, there are three areas in which we are not fully in agreement with the minority position.

First, we believe very strongly that a full Environmental Impact Statement (EIS) should be prepared in each frontier region in which offshore drilling is undertaken. However, we believe it best to allow that decision to be made under the existing NEPA legal structure and regulations. NEPA is the strongest and most protective environmental legislation that the Congress has ever enacted. We do not believe we should tamper with it, undermine it, or otherwise risk denying to coastal areas its protection, and thus believe, as the minority does, that it would be best not to follow the procedure adopted in the Committee Bill in regard to Environmental Impact Statements.

Second, we are happy with the power given to affected states and Regional Advisory Boards to influence the Secretary's decision in regard to lease sales and development and production plans. We do not agree that the power given to Governors and Regional Advisory Boards in the Committee Bill is too strong.

Finally, we do not agree that it is "highly unwise" to mandate new bidding systems be used for at least 10 percent of the areas offered for lease in each of the next five years as the Committee Bill provides. We did not support Committee amendments seeking to raise this percentage to 33 or 50 percent, but we do believe it important to press the Secretary of the Interior to use these new systems. otherwise we fear they will never be put into effect and we will never learn whether the taxpayers might not get a better break by their use.

Respectfully submitted,

**PIERRE S. DU PONT.
ROBERT E. BAUMAN.**